United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

B
P/S.

76-1345

IN THE

United States Court of Appeals

For the Second Circuit

No. 76-1345

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

against

RALPH JACOBSON,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FILED
SEP 16 1976
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SECOND CIRCUIT

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INDEX

	PAGE
Docket Entries	1
Indictment	4
Transcript of Trial Testimony of Arlene Kohn from Previous Trial of Indictment No. 73 CR 522	7
Transcript of Trial Testimony of Joan Jacobson from Previous Trial of Indictment No. 73 CR 522	24
Transcript of Trial Testimony of Judith Rosenblum from Previous Trial of Indictment No. 73 CR 522	37
Transcript of Rebuttal Examination of F.B.I. Agent French from Previous Trial of Indictment No. 73 CR 522	41
Transcript of Summation of Defense Counsel Gerald Alch from Previous Trial of Indictment No. 73 CR 522	50
Transcript of Summation of Prosecution Counsel C.I. Weintraub from Previous Trial of Indictment No. 73 CR 522	109
Transcript of Court Charge from Previous Trial of Indictment No. 73 CR 522	152
Copy of Appellant's 1968 Income Tax Return	198
Copy of Motion to Dismiss Indictment No. 75 CR 349 with Attendant Affidavit	202
Copy of Exhibit "A" of Motion to Dismiss (Indictment No. 73 CR 522)	209

INDEX (CONT'D.)

PAGE

Copy of Exhibit "B" of Motion To Dismiss (Judgment of Acquittal) 212

Copy of Government's Answering Affidavit and Memorandum of Law in Opposition to Motion to Dismiss. 213

Copy of Judge Lasker's Memorandum Opinion on Motion to Dismiss. 219

Transcript of Robing Room Conference Between the Court and Defense Counsel 223

Transcript of Court's Charge to the Jury on Indictment No. 75 CR 349 228

Transcript of Jury's Verdict and Conferences Attendant Thereto 255

Copy of Judgment and Probation/ Commitment Order. 267

Notice of Appeal. 269

DOCKET ENTRIES

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
UNITED STATES

75 Crim 349

vs.

RALPH JACOBSON
----------X

Proceedings

4- 9-75	Filed indictment and ordered sealed. Weinfeld, J.
4-15-75	Indictment ordered unsealed. Bonsal, J.
4-28-75	Deft. (no atty. present). Court directs entry of not guilty plea. Motions returnable in 10 days. Bail fixed at $5,000. P.R.B. Ordered to appear 5/5/75 at 10:30 a.m. in Room 506 with lawyer. Ordered photographed and fingerprinted. Case assigned to Judge Lasker for all purposes. Pierce, J.
4-28-75	Filed Deft's Personal Recognizance Bond w/ security in the sum of $5,000.00 signed and acknowledged by the Clerk, dated 4-28-75.
7- 1-75	Filed Notice of Appearance of Atty, La Rossa, Shargel & Fischetti, 522 Fifth Ave., N.Y.C. 10036 Tel. #687-4100
9-12-75	Filed Deft's Affdvt. & Notice of Motion for an order dismissing the Indictment and others as so indicated.
9-12-75	Filed Deft's Memorandum of Law.

11-11-75	Filed Deft's Memorandum of Law.
12-18-75	Filed Opinion #43568. The motion to dismiss the indictment is denied. Lasker, J. (Mailed copies)
5- 3-76	Filed Order respondent L.I. Consultation Center Inc. produce & deliver records as indicated, & shall be used solely for purposes of examination of the witness Theresa Lissauer & no counsel may disclose the contents. . . . . .Lasker, J. (mailed notice).
5-13-76	Filed Order of Sequestration. Ordered that the jurors being empanelled shall be sequestered & kept in custody of U.S. Marshal for SDNY as indicated, & that Marshal make arrangements to permit the jurors to go & bring back with them sufficient personal effects as indicated, etc. & this order may be altered, etc. as indicated. . . . Lasker, J. (Mailed notice)
5-10-76	Dft. Ralph Jacobson Present. Dfts. Atty. James La Rossa Present & Gerald Shayel (sic) Present present (sic) - U.S. Atty. Stephen Frankel present - Trial begun. Jury Selected and Sequestered.
5-11-76	Trial cont'd.
5-12-76	Trial cont'd.
5-13-76	Trial cont'd.
5-14-76	Trial cont'd.
5-15-76	Trial cont'd. & concluded - Dft. Found Guilty on Count 1 and Not Guilty on Count 2 - P.S.O. Ordered - Bail cont'd. - Sentence set for July 2, 1976 to 10 a.m. Lasker, J.
7-23-76	Filed Judgment & Commitment (Dft., Gerald Shargel present). The dft. is hereby committed to the

custody of the Atty. Gen. or his authorized representative for imprisonment for a period of THREE (3) YEARS. (Right to Appeal). . .Lasker, J. Issued Commitment 7/26/76.

7-23-76 Filed deft's notice of appeal. Filed copies.

/s/ A.E. THOMPSON

INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

JUDGE LASKER

v.

No. 75 CRIM. 349

RALPH JACOBSON,

Defendant.

----------X

COUNT ONE

The Grand Jury charges:

On or about April 15, 1969, in the Southern District of New York, the defendant, RALPH JACOBSON, a resident of New York, New York, who during the calendar year 1968 was married, unlawfully, wilfully and knowingly did make and subscribed and cause to be made and subscribed a United States Joint Income Tax Return, Form 1040, for the calendar year 1968, on behalf of himself and his wife, which tax return was verified by a written declaration that it was made under penalties of perjury, and was filed with the United States Department of Treasury, Internal Revenue Service, and which tax return having been prepared in New York, New York, the defendant did not believe to be true and correct as to every material matter in that the said

defendant falsely stated therein that their joint taxable income during the period January 1, 1968 to December 31, 1968 was $7,900.00 and that the amount of tax due and owing to the United States of America was $1,463.00 whereas, in truth and in fact, as the said defendant then and there well knew, their joint taxable income for said period was $12,910.00 upon which taxable income there was due and owing to the United States of America an income tax of $2,674.06.

(Title 26, United States Code, Section 7206[1])

COUNT TWO

The Grand Jury further charges:

On or about April 15, 1970, in the Southern District of New York, the defendant, RALPH JACOBSON, a resident of New York, New York who during the calendar year 1969 was married, unlawfully, wilfully and knowingly did make and subscribed and cause to be made and subscribed a United States Joint Income Tax Return, Form 1040, for the calendar 1969, on behalf of himself and his wife, which tax return was verified by a written declaration that it was made under penalties of perjury, and was filed with the United States Department of Treasury, Internal Revenue Service, and which tax return having been prepared

in New York, New York, the defendant did not believe to be true and correct as to every material matter, in that the said defendant falsely stated therein that their joint taxable income during the period January 1, 1969 to December 31, 1969, was $16,175.75 and that the amount of tax due and owing to the United States of America was $3,640.13 whereas, in truth and in fact, as the said defendant then and there well knew, their joint faxable income for said period was $22,482.06 upon which taxable income there was due and owing to the United States of America an income tax of $5,691.69

(Title 26, United States Code, Section 7206[1])

/s/ Paul J. Curran
PAUL J. CURRAN
United States Attorney

/s/ Margaret M. King
FOREMAN

laml
bs/nc

(The jury is present.)

MR. ALCH: Shall I call my next witness, your Honor?

THE COURT: Yes, sir.

A R L E N E K O H N , called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ALCH:

Q Arlene, how old are you?

A Twenty-one.

Q And are you employed or do you go to school?

A I go to school, college.

Q What college?

A Queensboro Community.

Q What year are you in?

A Secor ' year.

Q Arlene, do you know a woman by the name of Theresa Lissauer?

A Yes.

Q How do you know her?

A I worked -- I babysat for her and I occasionally worked in her store.

Q How old were you at the time that you babysat for her and worked at the store?

A I'd say about fifteen.

Q Arlene, referring your attention to the winter of 1968, do you recall an incident that occurred between Mrs. Lissauer and her father?

A Yes.

Q Will you please tell the jury what that incident was?

A Well, I was in the store and her father came in, they were having some type of argument and she tore the phone out of the wall --

Q Who is "she"?

A Madam Lissauer tore thephone out of the wall and threw it at him.

Q Do you recall whether her father was a big man or a small man?

A No, her father was very -- a little guy, a very little guy.

Q Arlene, referring your attention to March of 1968, do you recall when MRs. Lissauer went to the Mardi Gras?

A Yes.

Q When she came back from the Mardi Gras, did

she put in a claim for something?

A Yes.

Q What was the claim that she put in?

MR. WEINTRAUB: Your Honor, I'm going to object.

THE COURT: Yes.

BY MR. ALCH:

Q Did you ever witness any arguments between Mrs. -- do you know who Mrs. Tannenbaum is?

A Yes.

Q Who is she?

A She worked for Madam Lissauer. She was an employee.

Q Did you ever observe any arguments between Mrs. Tannenbaum and Mrs. Lissauer?

A Only pertaining to money.

Q When you say "money," what do you mean?

A Her pay.

Q Whose pay?

A Trudy's pay.

Q Did you ever, when you were in the store, see Mrs. Tannenbaum threaten Mrs. Lissauer?

A No.

Q Did you ever recall occasions in 1968 when

Mrs. Tannenbaum quit working for Mrs. Lissauer?

A No.

Q Was she ever fired?

A No, she was fired.

Q Were there ever any occasions when there was an argument between Mrs. Tannenbaum and Mrs. Lissauer and police were in the store?

A Not when I was present.

Q Do you recall an argument that took place on the night where there was a Bar Mitzvah that Mrs. Lissauer was scheduled to attend?

A Yes.

Q Can you tell us about that argument?

A All I remember is that there was a Bar Mitzvah and she was leaving with a man who came to pick her up, this guy Morris somebody-or-other, and I don't know if I recall an argument, but I just remember, you know, the scene when they were leaving. She was getting ready, you know, getting her kids ready to get into th- car and he pulled up in a limousine.

Q Did you see Mrs. Tannenbaum at the time of this incident?

A No, I don't believe so.

MR. ALCH: Mr. Jacobson, will you please stand

(Defendant complies.)

Q Have you ever seen this man in Madam Lissauer's store?

A No.

Q Have you ever seen him with the exception of seeing him in the courtroom, before?

A No.

MR. ALCH: You may be seated.

(Defendant complies.)

THE CLERK: Defendant's Exhibit X for identification.

(So marked.)

BY MR. ALCH:

Q Arlene, I want to show you a dress which has been marked as Defendant's Exhibit X for identification.

Would you look at it and tell me if it looks familiar to you at all?

A Yes, I can honestly say that this is one of her dresses -- this looks like one of the dresses that she was selling in the store.

Q By "she," whom do you mean?

A Mademoiselle.

MR. ALCH: No further questions.

CROSS-EXAMINATION

BY MR. WEINTRAUB:

Q Is it Miss Kohn?

A Yes.

Q Good morning.

A Good morning.

Q When did you begin working for Mrs. Lissauer?

A Sometime in '68. Christmastime, maybe before Christmastime.

Q How long did you continue working for her?

A It was only a couple of months. It wasn't anything more than that.

Q Only a couple of months?

A Yes.

Q How many hours a day were you in the store?

A I would say about three times a week, and it wasn't that many hours at all because I was going to school.

Q What was your function in the store, what kind of jobs did you perform?

A I was doing odds and ends and selling, you know, helping out in the store, fixing things and that was it.

Q What do you mean by doing odds and ends, what does that mean?

A Doing odds and ends means, whatever she asked me to do, you know. I woul straighten jewelry, straighten the dresses, sell to customers.

Q How much stock did Mrs. Lissauer have in the store at that time?

A How much? She had quite a bit of stock.

Q Did her stock turn over?

A Did it move?

Q Yes, did it move?

A It moved when she got -- how do I say it -- it moved pretty well, but there was a lot of discrepancies between customers and her, you know --

Q I'm not asking that.

MR. ALCH: Your Honor, I ask that she be allowed to finish.

A That's the point though.

MR. WEINTRAUB: I ask that it be stricken as unresponsive.

BY MR. WEINTRAUB:

Q Did stock move?

A It moved.

THE COURT: She was about to tell you in how many directions. Shemay complete her answer.

MR. ALCH: Thank you.

A The stock moved, I would say, regularly, you know, as normal as any other store, but there was a lot of discrepancies between her and customers and the merchandise was hardly ever ready when customers ordered it and she would take deposits and wouldn't return them if the merchandise wasn't good or sometimes she didn't even have the thing all together, but just to take money. That was the whole principal idea.

Q How were you able to tell us -- are you able to tell us that this dress came from Mademoiselle Lissauer?

A Yes.

Q How are you able to tell us that?

A Because I can tell by the beading.

Q By the beading?

A Yes, the front. Because a lot of her dresses were -- I don't want to say gaudy, but a lot of them -- that's how I knew it, I krew it by the beading.

Q Is there a label on this dress?

A Is there a label? No, not that I see.

Q There is no label?

A No.

Q Were there labels in the dresses that Mrs. Lissauer was selling?

A Yes. There usually were.

Q Have you ever seen other dresses in other shops that had beads on the front?

A Of course.

MR. WEINTRAUB: I have no further questions.

MR. ALCH: Nothing further.

Thank you, Arlene.

(Witness excused.)

(continued next page.)

R O S E K O H N , called as a witness herein, having been first duly sworn by the Clerk Of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ALCH:

Q Mrs. Kohn, are you the mother of Arlene, the girl that just testified in this courtroom?

A Yes.

Q Do you know a woman by the name of Madam Lissauer, Theresa Lissauer?

A I do.

Q How do you know her?

A It started by my daughter used to babysit for her and then I went into the store one Saturday to -- I don't know, give Arlene a message or something, and the store was busy and I sort of pitched in, helped her, and she liked the way I did it so she says to Arlene, "Gee, would your mother like to work here part-time?"

So, of course, when Arleme came home she asked me.

I says, "Yeah, it's very convenient, so maybe I will,"at my leisure, you know, my hours.

Q Did you eventually begin to work for Madame Lissauer?

A Yes. But part time, sort of, you know, a few days a week. I'd help out on a Saturday, maybe a Monday, about three days a week on and off. Nothing really steady, but it was a period of a few months it ran.

Q When did this commence, around Christmastime?

A Yes.

Q Of what year?

A About '68.

Q Christmas of '67 or '68?

A '67 and then it went on to '68, right.

Q Now, do you recall to what month in '68 you were working for Mrs. Lissauer, approximately, to the best of your recollection?

A Well, I'm trying to think -- I always forget what time of the year Mardi Gras is, because I think subject to that time, was that February or March, what is it? March I think, just about that and after that I sort of quit.

Q Mrs. Kohn, while you were in the store working for Mrs. Lissauer, do you recall ever seeing any arguments between Mrs. Lissauer and customers?

A All the time. All the time. There was also arguments about they would order clothes and she would never fulfill their order, she would take their deposits

and never, never fulfill them.

There was always people arguing with her because of her -- because the dresses weren't ready or they were damages or they were this, there was always arguments, always.

Q Referring your attention to June of 1968, do you recall an argument between Mrs. Tannenbaum and Mrs. Lissauer?

First of all, do you know a woman by the name of Miss Tannenbaum?

A Yes.

Q Who is she?

A Trudy is a saleslady. I got to know her through the store which I found she was a very nice person.

Q How was Mrs. Tannenbaum as you observed her with relation to the customers?

A Very well. She loved to have Trudy wait on them. She was very courteous and very helpful to the business.

Q Referring your attention to June of '68, did you have occasion to see and witness an argument between Mrs. Tannenbaum and Mrs. Lissauer?

A Yes, I did. I can't remember the exact date, I know I was about ready to go home and when I walked in she was asking for her pay, which we all did. I mean that

was always the argument, she would never pay us, so she asked her for her pay --

Q Who is "she"?

A Trudy asked Madam Lissauer --

Q Mrs. Tannenbaum?

A Yes. She asked her for her pay, she says, "I want the money you promised me." And one word led to another and Trudy said, "Come on,"and there was a roll of chiffon, which is very light and Madam Lissauer's no thin person, so she just went with the thing and she went, "Now, come on, give me my pay."

Q Who did?

A Mrs. Tannenbaum to Madam Lissauer. So Madam Lissauer always had an oval-shaped mirror on her table and she took this mirror and she threw it at Trudy.

Q At Mrs. TAnnenbaum?

A Yes, at Mrs. Tannenbaum and with that she said, "I'm going to call a cop."

And at that time, I said, "It's time for me to go home." And I went home.

Q Do you ever recall Mrs. Tannenbaum quitting the job that she had for Mrs. Lissauer?

A Yes. Well, I imagine that particular night she did because when I came in in the morning she said to me--

Q Who is "she"?

A Madame Lissauer,she says, "Rose, will you call Trudy and tell her to come back?" Which I called Trudy but Trudy says, "Oh, forget it, I've had it."

And that was it.

Q Did you ever see Mrs. Tannenbaum threaten Mrs. Lissauer?

A Never. Never.

MR. ALCH: Mr. Jacobson, will you please stand.

(Defendant complies.)

Q Have you ever seen this man in Madam Lissauer's store?

A Never. The only time I see him was last year when I was in court, that was the first time I ever saw him.

MR. ALCH: Thank you, Mrs. Kohn.

No further questions.

CROSS_EXAMINATION

BY MR. WEINTRAUB:

Q Mrs. Kohn, have you continued to have contact with Mrs. Tannenbaum after you left Madam Lissauer?

A Oh, very little, very little.

Q Have you seen her, spoken with her?

A Oh, I haven't seen her in a long time; no, I haven't seen her.

Q Did Mrs. Tannenbaum sell dresses from her home?

A At one time she did for a little while, I think that was the last time I saw her. I think I met someone in the street and said that Mrs. Tannenbaum was selling. And I think I once went up there to look at some clothers.

Q Did Mrs. Tannenbaum bring any of those clothes and sell them from the store?

A Not that I remember. No, not that I know of.

Q You don't recall that?

A No, I really don't. She might have done it, but not when I can remember.

Q When did you stop working for Mrs. Lissauer?

A When did I stop?

Well, it must have been after the Mardi Gras season. Is it March, is that when it is? Soon after that -- well, she owed my daughter money, and I took her to court because she would just refuse to give it.

And that was it. I never went back anymore.

Q You said on direct -- excuse me for interrupting. You said on direct that -- in answer to Mr. Alch's

question, that Mrs. Lissauer never, never delivered merchandise to customers.

MR. ALCH: I'm going to object to that. That was not her testimony.

THE WITNESS: I didn't say never, not never. I mean -- I'm sure maybe some she did, but it was quite a number that she didn't, because the night when I went to collect the money she owed my daughter there was a few people outside the store waiting to get their clothes, and she just -- she wouldn't open the door, because my husband knocked --

Q Did you say --

A Pardon?

Q Did you say that Madam Lissauer never, never fulfilled orders?

A I didn't say never, never. Lots of times she never did.

Q You don't recall saying that on direct, is that your testimony?

A Well, I know she didn't --

Q Do you recall saying --

MR. ALCH: Objection. She answered the question if the Court please.

THE COURT: No, she hasn't directly answered.

The question is: Do you recall saying that on your direct testimony, that she never, never fulfilled her orders?

THE WITNESS: Maybe I did, because she was that type of a person, that she -- if she owed you money she never gave it to you. You had to go after her.

BY MR. WEINTRAUB:

Q Did you say that on direct?

A Maybe I did say it. I can't remember, to be truthful.

THE COURT: Now, let's -- do you want it read?

Can you locate it?

(Record read.)

THE COURT: Next question.

BY MR. WEINTRAUB:

Q Is it your testimony that she --

THE COURT: She just heard it, please.

A That's -- if I said it, that's what I must have said.

MR. WEINTRAUB: I have no other questions.

MR. ALCH: Nothing further. Thank you.

THE COURT: You are excused, Mrs. Kohn.

Reel 2 flws. (Witness excused.)

MR. ALCH: May I call my next witness?

THE COURT: Yes.

J O A N J A C O B S O N, called as a witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALCH:

Q In answering my questions, please use the microphone so the jury can hear.

Will you give us your name again, please?

A Joan Jacobson.

Q Are you the wife of Ralph Jacobson, the defendant in this case?

A Yes, I am.

Q And do you have any children, Mrs. Jacobson?

A Yes, I do.

Q How many?

A Four.

Q Are they in school?

A Today they are home.

Q But they attend school normally?

A Yes.

Q Do you know a woman by the name of Theresa Lissauer?

A Yes.

Q Referring your attention to January of 1968, did you have occasion to see her in that month?

A Yes, I did.

Q How did you come about seeing her in that month?

A I was out shopping.

Q With whom, if anyone, were you shopping?

A I was with my husband and my niece.

Q What is your niece's name?

A Judy Rosenblaum.

Q And did the three of you go into Mrs. Lissauer's store?

A Yes.

Q Would you please tell the jury what happened when you went in?

A Well, we went in, my niece and I were both shopping, and we tried on merchandise and we selected merchandise. As a result of that we left a deposit, I mean my niece left it.

Q Did you personally leave a deposit on any items?

A My husband left it for me.

Q For what items, do you recall?

A Evening clothes.

Q Do you recall the amount of the deposit that your husband left?

A It was between two and three hundred dollars.

Q And did you receive a receipt for the $300.

A Yes.

Q Will you please tell the jury what happened next with your regard to your contact with Mrs. Lissauer?

A Well, after -- when we purchased the items, we were told that we would have them, like, in two weeks, 10 days, and we went back and they weren't ready and as a result --

Q When you say "we" who do you mean by we?

A My niece and I.

Q Go on.

A -- who also purchased.

And as a result of that we went back again and again and they still weren't available to us.

Q When was the last occasion that you recall going into Madam Lissauer's store and inquiring about this merchandise which you had ordered?

A I would say it was sometime in February.

THE COURT: Of what year?

THE WITNESS: Of '68.

THE COURT: "68?

Q '68?

A Yes.

Q Were you alone at this time or were you with somebody?

A My niece.

Q What happened when you were in the store on that occasion?

A The merchandise still wasn't ready, I mean, you know, we just kept getting stories and stories.

Q Did you ever have occasion to pick up any merchandise for your niece from Mrs. Lissauer?

A Yes.

Q When was this, to the best of your recollection?

A That was sometime in mid March.

Q Of 1968?

A Of 1968.

Q What did you pick up from Mrs. Lissauer for your niece?

A A dress.

Q Showing you what has been marked as Defendant's Exhibit X for identification, I ask you if you recognize this dress?

A Yes, I do.

Q What is that dress?

A This is the dress I picked up from Mrs. Lissauer's store for my niece.

Q Was this dress in the store when you first went in with your niece in January of 1968?

A This was the original dress that my niece tried on.

Q Is there any particular reason why she didn't walk out that day with the dress?

A Because it was damaged.

Q And in late March or mid March of 1968, when you picked up that dress, what if anything did you notice when you brought it home?

A Well, when I got it to my niece, she opened it and she saw that it was a damaged dress, that she had never gotten the piece of merchandise.

Q Mrs. Jacobson, did you ever receive the merchandise which you had put a deposit down for?

A No.

Q Did there come a time when you stopped going to Mrs. Lissauer and asking her for it?

A Yes.

Q What did you do when you stopped going there?

A It became very frustrating and I asked my husband to please take care of it.

Q Did you give him the sales slip?

A Yes, I did.

Q As a result of your asking your husband to take care of it for you, did you ever receive the deposit back from Mrs. Lissauer?

A No.

Q To your knowledge, did you ever receive the dresses hat you had ordered?

A No.

Q Subsequent to that period of time in which you asked your husband to take care of it for you, giving him the slip, what was the next thing that you recall happening with regard to Mrs. Lissauer?

A Well, after I gave the receipt to my husband, he absolutely got no place either. The next -- then we, you know, these things just go out of your mind, and the next thing, the following year we received a bankruptcy letter.

Q Do you recall when this was in 1969?

A Sometime in January of 1969.

Q What if anything do you recall seeing on these bankruptcy papers?

A Well, I couldn't understand it because we were being claimed for bankruptcy in an amount of $2500 and I showed it to my husband and he got very upset about it and,

you know, it just came out nowhere.

Q What if anything did he do or say or do when you showed it to him?

A He became very upset and said he was going to straighten it out with her, that she was going out of business and he would go and get me some merchandise or our money back or something.

Q Mrs. Jacobson, do you know a couple by the name of Mr. and Mrs. Marvin Nadborne?

A Yes.

Q Do you recall attending a bar mitzvah in October of 1968 for the son of Mrs. Wizner, of a Mrs. Wizner?

A Yes.

Q Do you recall seeing Mrs. Nadborne and Mr. Nadborne at that affair?

A Yes.

Q Referring your attention now to February of 1969, do you recall attending the bar mitzvah of Mr. Nadborne's son?

A Yes.

Q And your husband was with you?

A Yes.

Q And I take it you saw Mr. and Mrs. Nadborne at that affair as well?

A Yes.

Q Between the Wizner bar mitzvah in October of '68 and the Nadborne bar mitzvah in February of '69, did you and your husband have occasion to be in the presence of Mr. and Mrs. Nadborne on social occasions?

A Yes, we were.

Q How many such occasions, can you recall?

A Oh, about two times, to my recollection.

Q Can you recall where these times -- where these incidents occurred?

A Once it was at a bar.

Q Do you remember the name of the bar?

A I think it was the Silhouette.

Q Do you recall what the second occasion was?

A It was at a charity function that my -- one of my girl friends relatives were involved with.

Q Were you and your husband social acquaintances at that time -- would you refer to yourself as social acquaintances of the Nadbornes?

A Only mutual, through my girl friend Shirley, Mrs. Wizner.

Q Was that mutual friend what caused you to find yourself in the company of the Nadbornes?

A Yes.

MR. ALCH: Thank you, Mrs. Jacobson, no further questions.

CROSS-EXAMINATION

BY MR. WEINTRAUB:

Q Goodmorning, Mrs. Jacobson. My name is Charles Weintraub. We have not met before, is that correct?

A No, we have not.

Q Did you testify that you went in to purchase some evening clothes in February of '68, January of '68?

A January of '68?

Q What was the total cost of the evening clothes that you were purchasing at that time?

A To the best of my recollection, the total, cost, I think we left about half of the amount, it would have to be between two and three hundred dollars, whatever the difference would have come out. I don't remember exactly at this point.

Q I am sorry, I am not clear. What was --

A In other words, we --

Q What was the total cost?

THE COURT: She said about twice the deposit. Is that what you said?

THE WITNESS: I said we left about half the

amount. We left between 200 and 300 dollars deposit.

Q And you went back yourself once to try to get the dresses?

A That's not what I said. I went back with my niece twice.

Q Twice?

A Yes.

Q Did you ever go back for any fittings of those dresses?

A The dresses were never available to me.

Q Did you see the dresses there in the store when you went back?

A No.

Q Never picked up those dresses?

A No.

Q Never filed a claim in Small Claims Court for the deposit that you didn't get back?

A No.

Q For over a year you didn't get the dresses and you made no claim?

A All we had was aggravation from it.

Q Did you make a claim in bankruptcy?

A No.

Q You made no claim in bankruptcy. You were

listed as a creditor for $2500 and you made no --

MR. ALCH: Objection.

THE COURT: She was not.

Q Your husband was listed as a creditor?

A Yes, that's what I said.

Q Do you know if he made a claim in bankruptcy?

A I would assume that Mrs. Lissauer made the claim.

Q No. Do you know if your husband filed a claim with the Bankruptcy Court to get back money that was due him?

A No.

Q Is your answer that he didn't or that you don't know whether he did?

A No. Mrs. Lissauer made the bankruptcy claim.

Q Can you describe what the receipt that you received looked like?

A Not really. I would imagine it was a regular, you know, receipt.

There was nothing special that I would recall. It is a number of years ago.

Q Did you keep the receipt?

A I am sure I kept it for a certain amount of time.

Q Do you have the receipt today?

A No.

Q How many times did your husband go down to Mrs. Lissauer's store to try to get the deposit back and/or the dresses that you know of?

A That I know of?

Q Yes.

A I asked him to go I don't know how many times. He might have been in there after I told him to please take care of it, but I mean, it became very upsetting.

I do have children and I couldn't run back and forth. So I asked him to please take care of it.

Q How many times did he go, do you know?

A I can't give you the exact amount of times, no.

Q What was your husband doing for a living at that time?

A What was he doing for a living? He had a supermarket in Brooklyn.

Q He had a supermarket? Were you present at the supermarket conducting business?

A No, I was home conducting my household business.

Q Was your husband there everyday conducting

business?

A I would assume so.

Q Do you know?

A Do I know that he was there every minute of the day conducting business? We left the house to go to his business.

Q Do you know if he was there daily conducting business?

A As far as I know, yes.

Q What was the name of the supermarket?

A It was Manor Meat.

MR. WEINTRAUB: I have no further questions.

REDIRECT EXAMINATION

BY MR. ALCH:

Q Just one question, Mrs. Jacobson, do you recall your husband during this time in the period of 1968, did he have any other enterprises, other than the meat market; was he managing any groups?

A Yes, Jay and the Americans.

Q Who are Jay and the Americans?

A They are a vocal group.

MR. ALCH: No further questions.

MR. WEINTRAUB: No questions.

MR. ALCH: You may step down.

I have one more witness, if the Court please.

(Witness excused.)

J U D I T H R O S E N B L U M, called as a witness, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ALCH:

Q Would you please speak into the microphone. Would you tell us your full name?

A Judith Rosenblum.

Q Are you any relation to Mr. Ralph Jacobson, the defendant in this case?

A Yes, I am.

Q What is that relationship?

A His niece.

Q Do you know a woman by the name of Theresa Lissauer?

A Yes, I do.

Q Referring your attention to January of 1969 -- excuse me, January of '68, did you have occasion to go into her store?

A Yes.

Q Who if anybody was with you?

A My uncle and my aunt -- his wife, my aunt.

Q By your aunt, you mean the woman that just

passed you when you came in?

A Mrs. Jacobson.

Q What if any business did you transact at the store?

A Well, I had bought a dress and ordered a pants suit from her, from Mrs. Lissauer.

Q Did you take anything home with you?

A No.

Q Was there any particular reason why you didn't take the dress home?

A The dress that I had tried on was damaged and she told me that she would get me a new one.

Q Showing you what has been marked as Defendant's Exhibit X for identification, can you recognize that dress?

A Yes. That's the dress I ordered.

Q You didn't take it home with you that day because it was damaged?

A Right.

Q Did you have occasion to be back in the store run by Madam Lissauer subsequent to that date?

A Yes.

Q Approximately how many times?

A I am really not certain. I think it was at least once more, but I had called her a few times, too.

Q In that first occasion that you were at the store with Mrs. Jacobson, did Mrs. Jacobson transact any business?

A Yes, she did.

Q What did you see her do with regard to transacting any business?

A I don't remember exactly how many garments she ordered, but I know she ordered a gown and at least another dress with a coat, I think it was.

Q Do you recall her leaving any deposit?

A Yes. My uncle left money.

Q And you made this one or two more trips subsequent to January of '68 to Mrs. Lissauer's store, did you stop going there or did you keep going there?

A Well, I called her a few times and she kept delaying me, she kept saying "Well, the dress is not in yet. It's not in yet." Then I had called, I believe it was twice, and she wasn't there, and I thought they were giving me the run around.

Q Did you eventually get the dress?

A My aunt had picked it up for me. The day before I needed it, she picked it up for me.

Q Do you recall when this was?

A It was sometime in the middle or towards the

end of March that I finally got the dress. As a matter of fact, it was on a Saturday.

Q Of 1968?

A Yes.

Q And is the dress that I showed you before, Defendant's Exhibit X for identification, is that the dress that Mrs. Jacobson brought home to you?

A Yes, it is.

Q Did you notice anything unusual about it?

A Yes. When I opened the box it was the damaged dress and I had needed it for the Sunday after she had brought it and I was fuming.

Q Did you return the dress or did you keep it?

A No, I kept it because she wouldn't acknowledge me. She had gotten very nasty after a while.

Q By "she" you mean who?

A Mrs. Lissauer.

MR. ALCH: No further questions.

MR. WEINTRAUB: I have no questions, your Honor.

THE COURT: You may step down, Mrs. Rosenblum.

(Witness excused.)

MR. ALCH: May it please the Court, the defense concludes its evidence at this point and rests.

MR. WEINTRAUB: Your Honor, the Government calls Thomas French.

THE COURT: You have been sworn as a witness, Mr. French?

THE WITNESS: Yes, your Honor.

THE COURT: The oath that you earlier took applies to the testimony that you now give.

REBUTTAL EXAMINATION

BY MR. WEINTRAUB:

Q Mr. French, you are an agent with the FBI, is that correct?

A Yes, sir.

Q And in the course of your investigation, did you have occasion to contact an attorney named Stanley Gewanter?

A Yes, I did.

Q Why did you contact him, sir?

MR. ALCH: Can we have the time period, if the Court please?

Q When was it that you contacted Mr. Gewanter?

A I would say sometime in probably early '73, maybe late '72, somewhere in that period. I can't pinpoint it.

Q Why were you contacting him?

A I contacted him to see if he had any record pertaining to Madam Lissauer and her bankruptcy, anything of that nature.

Q Were you investigating a bankruptcy fraud?

A No sir, I was not.

Q Have you since reviewed the records of the Federal Bureau of Investigation to see whether there was a bankruptcy fraud investigation at that time of Madam Lissauer?

A Yes, I have.

Q Was it there?

A No, sir, there was no record of any bankruptcy action.

THE COURT: No bankruptcy fraud investigation?

THE WITNESS: Right, by the --

THE COURT: Of Mrs. Lissauer or her company?

THE WITNESS: That is correct, your Honor.

MR. WEINTRAUB: Thank you. No further questions.

CROSS -EXAMINATION

BY MR. ALCH:

Q Mr. French, could you tell the jury to the best of your knowledge approximately how many FBI agents there are working for the Government in the New York area?

A I'd say approximately a thousand.

Q Are any of these assigned to the Queens area; are they assigned by areas?

A No, they are not.

Q Is there any specific division that is referred to as the Fraud Division?

A It wouldn't be the Fraud Division, sir. It would be basically handling that type of investigation, yes, sir.

Q When you say that type of investigation, you mean criminal fraud?

A Yes, I believe it would be criminal, yes.

Q If there were a bankruptcy fraud section, can you tell the jury whether or not there would be a particular department or group of agents to whom that investigation would be assigned?

A Yes sir, for the most part there would be a particular section that would handle that at this point.

Q Does that particular section have a name?

A No sir, it's just the section.

Q How do you refer to it in your everyday parlance?

A We break down the sections by numbers, then the classification, each section is assigned a classification.

Q Whatever this section is referred to by number, the section that would investigate a bankruptcy fraud, is there more than one such a section of agency in the New York area?

A I don't know for sure. I think there is only one section.

Q Aren't there agents that are assigned, let's say, to the Southern District in downtown Manhattan?

A No sir.

Q Where are you assigned?

A The City. I am assigned to New York City. The office, the main office in New York City, but I cover anywhere -- any area within the district.

(Cont'd on next page.)

JB:MM
T2R1

Q How many agents would you say comprised this group, whatever you referred to, that would investigate a bankruptcy fraud?

A I would just have to venture a guess and say about fifteen to twenty, sir.

Q Can you name any of those fifteen to twenty for us? Can you name the twenty for us?

A No sir, I cannot.

Q Can you tell the Jury prior to your coming into Court today you personally contacted the fifteen or twenty men and asked them whether or not they made a call to Mr. Gowenta regarding a bankruptcy fraud?

A No, sir, I cannot.

MR. ALCH: No further questions.

MR. WEINTRAUB: No further questions, your Honor.

(Witness excused.)

MR. WEINTRAUB: No further rebuttal.

THE COURT: The Government rests?

MR. WEINTRAUB: Yes.

THE COURT: We will have a short recess now, members of the Jury, and then we will hear the closing arguments of counsel. Please do not discuss the case with one another or anyone not on the Jury until it is

gi given to you to decide.

(Whereupon, the Jury retired from the court-room.)

THE COURT: Gentlemen, was Exhibit X ever received in evidence?

MR. ALCH: It was not.

THE COURT: That is just going to break the hearts of the women on the Jury who would want to render an expert opinion on needlework. But I'm sure there were some women on that Jury that could tell you exactly what manufacturer it came from.

Okay. So we have thirty-three exhibits.

THE CLERK: Yes sir.

(Recess taken.)

THE COURT: The only thing I wanted to ask you about is the chart. Have you exhibited it to Mr. Alch and how bad is it now?

MR. ALCH: I took a peak at it, your Honor, and--

THE COURT: Do you think it's been purged?

MR. ALCH: Well, I object to its use. It's certainly better than what it was. But my objection should be noted.

THE COURT: I think it can hardly be regarded as inflamatory or prejudicial. And I think it does enable the Jury to understand material that is in

evidence.

You may use it during summation.

MR. WEINTRAUB: Thank you, your H onor.

THE COURT: The only other thing I wanted to ask you about is whether you had a chance -- if not, we will do it later -- to look at page nineteen. I gave you it this morning.

MR. ALCH: I have, your HOnor. And it's acceptable.

THE COURT: Does it look all right to you?

MR. ALCH: Yes.

THE COURT: Does it look all right to you?

MR. WEINTRAUB: Yes. I have looked at it.

THE COURT: In page 100, the only change is the thirty-one witnesses and thirty-three exhibits, in case you get to that.

Where do you want the lecturn?

MR. ALCH: I can work from here if it's all right with you.

THE COURT: You like it better there?

MR. ALCH: Yes.

And may I for the record, your Honor, renew my motions --

THE COURT: Yes.

MR. ALCH: (Continuing) -- made at the close of

the --

THE COURT: Acquit on each of the four counts.

MR. ALCH: I do, your Honor.

THE COURT: I assume you do not --

MR. WEINTRAUB: I do not -- well, I pose the motion.

THE COURT: On all counts?

MR. WEINTRAUB: Yes.

THE COURT: All right. The motion is denied.

MR. WEINTRAUB: I assume that covers the reservation on the --

THE COURT: Yes. Because I think, as I understand it, you did not move to strike the Nadborne testimony on the grounds of the failure to prcduce him for continued cross.

MR. ALCH: That's correct.

THE COURT: Right.

MR. WEINTRAUB: Thank you.

THE COURT: Is it all right to start now, Mr. Jacobson?

THE DEFENDANT: Fine with me. It's just when she comes in with the milk, I would like to get it. And if the Jury is here --

THE COURT: Well, you shouldn't miss a word of this. You are paying for it.

MR. ALCH: All right. We are ready to proceed.

THE COURT: The concession may be closed.

THE DEFENDANT: They went to the other side of the building.

THE COURT: The concession, or whatever they call it, well, when she comes in with it, you just go over to the bench and get it. I am sure -- if you would rather not drink it in the presence of the Jury, even milk, well, all right. You can do it in the recess between the two arguments.

(Whereupon, the Jury entered the courtroom.)

THE COURT: All right, Mr. Alch.

MR. ALCH: May it please the Court, members of the prosecution. ladies and gentlemen of the Jury:

Well, we are near the end of a long haul. I am sure it's been longer for you people because you haven't been allowed to return to your homes during the trial.

I want to again apologize for the unpleasant but necessary inconvenience that you have undergone. And I want to thank you for your complete and undivided attention which was obvious to me thatyou have given throughout the trial.

You will recall that Judge Dooling told you that the purpose of a closing argument is for a lawyer to

try to put the pieces together for you and to aid you or try to aid you in viewing the evidence as they hold. And I'm going to try to do that. But I am not going to use the type of approach in which I pick out testimony from a certain page and read it to you and then pick out testimony from another page and read it to you, and point out inconsistencies between an answer given by one of the Government witnesses on direct examination when the questions were asked by the prosecutor and the answers given to me.

I think that would bore you. I think it would in effect amount to a replay of the trial, which I don't think you are inthe mood for.

I'll try to summarize the evidence withparticular regard to whether or not the prosecution has proven Ralph Jacobson guilty beyond a reasonable doubt, which they must do.

And when I recall testimony, if your recollection does not jive with mine, go by what you remember it to be. I may be mistaken. I don't think I am. I certainly won't be intentionally, but your recollection will be the thing that counts.

And after I get through, the prosecutor will get up and have the same opportunity to speak to you. Then

his Honor will give you the law of the case as to the law in which you are to apply to the facts as you understand them, go back into the Juryroom and you decide.

In a trial of this nature -- this may be telling you something that is obvious, but nevertheless I want to take the liberty of explaining to you that the witnesses that were called by the prosecutor were witnesses called by the Government upon which they based their claim that they have proven Mr. Jacobson guilty beyond a reasonable doubt.

And you will recall that there was a time in the trial when they said, "We rest" and then I began to call witnesses. And those were witnesses that I called to try to establish a reasonable doubt.

But I ask you to keep in mind, as I told you at the beginning, that even though there was a witness on the stand which had been called by the prosecutor, nevertheless when I had a chance to cross-examine him or her and ask them questions, the answers that they gave me is evidence for you to consider even though they weren't my witnesses in the sense that I called them to the stand.

So your function in a Jury trial, as in every

criminal trial, is to find the facts.

The Judge's function is to decide the appropriate law. And in a way Judge Dooling has acted as a -- you might say, meaning no disrespect, a filter -- a filter of evidence.

You remember at the beginning I told you that there would be times when I would be standing up and making objections and the prosecutor would be objecting. That's the lawyer's way of saying that that bad evidence shouldn't be allowed in. And the Judge rules on that and filters out the good from the bad. He lets the good in and the inadmissible evidence, he keeps out.

However, there is one thing that Judge Dooling simply cannot do in this acting as a filter, so to speak, and that is to keep out false testimony. He can't do that.

That's your province. And we as lawyers try to help you in determining what testimony is true, what testimony is false. We try to help you by cross-examining witnesses.

And let's face it, this is not a Perry Mason. This isn't a situation where I'm going to get a witness on the stand or I am going to get Mrs. Lissauer or

Mr. Nadborne has refused to testify. He's refused to testi-

Mr. Nadborne to stand up and say, "Okay. I change my testimony. I'm lying. You're right. There's nothing to this. All that I have said is false."

That only happens, I'm afraid, in the TV programs and in the movies. But what we do try to do and what I have tried to do in cross-examining the witnesses is to try to strike a responsive cord in each of your minds so that when I asked a question on cross-examination and a witness gives an answer, a bell may go off and you may say, "That doesn't sit right with me."

That's the type of signal that you have in determining whether or not a witness is telling the truth. And you are not trained as Jurors. There is no school for Jurors. So the only thing you have to rely on is your common sense.

That's all. Your common sense, that you use as you go through life.

And when I talk to you I am going to be appealing to your common sense. My argument is not going to be a technical one that requires you to have gone to law school. It is going to be based upon your common sense.

And it is my contention that using your common sense, the Government has not proven Mr. Jacobson

guilty beyond a reasonable doubt.

Now, the reason I say that is because your job is not merely to determine whether or not you think Mr. Jacobson did what Mrs. Lissauer and Mr. Nadborne said he did.

The trial system says to you that unless the prosecution removes all reasonable doubt from your mind, unless you can say that Mr. Jacobson is guilty beyond a reasonable doubt, you must find him not guilty. That means that. And I don't mean to sound offensive about this, but I am just trying to talk to you with common sense.

That means if you should get back into the Jury-room -- and I'm not saying that you will be thinking this -- but if you think to yourselves, "Well, I think maybe he did it. I have a hunch that he did it. He probably did it."

That's not enough. Because as the Judge explained to you at the beginning, this isn't a civil trial where two people get into an automobile accident and one sues the other for money. There the suing party just has to make you think that it probably happened the way he said it happened and it was the other fellow's fault.

But in a criminal trial you have to be convinced beyond a reasonable doubt.

And if you are not, even if you think, "Well, maybe -- maybe, but I do have a reasonable doubt," the law commands -- you can't change it -- the law commands that you bring back a verdict of not guilty.

R2 And this reasonable doubt that I have been talking about is a lulu, in the sense that it's not easy to define. Judge Dooling will do the best he can and give you a definition of reasonable doubt and tell you that it's not a standard thatyou use in your every day life.

By that I mean, for instance, if you are married and your husband comes home and says to you, "Well, would you like to go to a movie tonight," you don't say to yourself, "Well, before I say, Yes, am I sure I want to go to the movies beyond a reasonable doubt."

You don't think that way in every day things. But there are occasions when you have serious decisions to make in your every day life.

For instance, if a person goes to a doctor -- God forbid it should be any of you -- but hypothetically speaking, if a person goes to a doctor and the doctor says, "You are very ill and the only way to save

your life is to have a limb amputated," that's a situation where you want to be certain beyond a reasonable doubt that it was necessary before you said okay tothe doctor. Or if you are a working man and you have a job offer in another state and taking that job means pulling up your roots, taking your kids out of school putting them into a new school, meeting new friends, having your children meet new friends, that's an important decision in which you want to be sure beyond a reasonable doubt that the move would be a good thing for you.

And thatis the type of standard that you must apply in this case.

So your question is not necessarily, is Mr. Jacobson guilty or not guilty, it's precisely, do I have a reasonable doubt as to his guilty. And if you do, the Judge, will tell you that you must find him not guilty.

Now, you have heard all the evidence. These claims by Lissauer and Nadborne, I submit to you don't make sense. They don't make sense.

The one thing that jumps out of this trial is that the type of claim that they are making against Mr. Jacobson is very, very easy to make. How many times

does a person loan money to another person and then breaks his promise with regard to repaying it, and the person that lent him the money gets angry.

And the thing that jumps out of this evidence is the fact that it's very easy for someone who is -- who has borrowed money to at a later date for his own selfish reasons say, "Well, he threatened me when I couldn't pay him back."

And, therefore, it's a crime.

"And, therefore, I don't owe him the money. I don't have to pay him the money."

It's very easy to say that. Very easy.

And his HOnor will tell you that if you find that a loan was made to either Mr. Nadborne or Mrs. Lissauer, and even if you find that a loan was made and there was interest attached to it that is higher than a bank would charge or even higher than the law would allow, that even though it may be distasteful to you, it is not the crime that Mr. Jacobson is charged with. Because the key and the necessary element of the crime with which Mr. Jacobson is charged is threats. Threats.

And if you don't find beyond a reasonable doubt that there was a threat, even if you should find that

there was a loan and the high interest, if you are not convinced beyond a reasonable doubt that there were threats made, under the law as the Judge will explain it to you, you must find Mr. Jacobson not guilty.

The first thing if the evidence flashes is the delay. And by the delay I mean the delay between the ending of the episode as Mrs. Lissauer tells it, her last contact with Mr. Jacobson, and the ending of Mr. Nadborne's episode as he tells it, his last contact with Mr. Jacobson, the delay between those last contacts and the first time each of them say that they complained about it to law enforcement authorities.

You will recall that Mr. Nadborne said that his last contact with Mr. Jacobson was in late 1970 and that his first contact, as far as relating this to any representative of the Federal Government, was in 1972.

Now, using common sense, I would think you may say to yourselves why the delay? I mean if you put your hand on a hot stove andit burns, you don't say, ouch an hour later. You say, ouch.

And if someone burglarizes your home, you don't wait a month to call the police. You pick up the phone right then and there and call the police.

Mrs. Lissauer testified that her last contact with Mr. Jacobson was in March of 1969, and that she first made any complaint to a representative of the Federal Government in 1972. So there is a three-year delay.

And using your common sense, I ask you to ask yourselves, if Mr. Jacobson did what Mrs. Lisauer and Mr. Nadborne said he did, why did it take Mr. Nadborne two years and why did it take Mrs. Lissauer three years to make any complaints.

It would seem to me that if a person is the victim of threats the way Mrs. Lissauer said she was and the way Mr. Nadborne said he was, and you say to them, well, why was this delay, Mrs. Lissauer, why did you wait three years; Mr. Nadborne, why did you wait two years, what does your common sense tell you that there response would be if they are telling the truth.

I submit that there response would be in explaining the delay, if they are telling the truth, would be, "I was afraid."

Doesn't that make sense? If they are claiming that they have been threatened, as Mrs. Lissauer says with a gun, Mr. Nadborne says, "I was pushed," and you say to them, "Well, why did you wait two and three years"

if they were telling the truth, wouldn't your common sense tell you that there responses should be, "I was afraid."

But that wasn't there response. And I'm not going to, as I told you, bore youwith transcripts, but I want to be specific as tc just what the response was.

Page 128, when I asked Mr. Nadborne that question, line twelve, here is the question I asked him. I said:

"Question: Can you please tell the Jury why if your last contact, including these alleged transactions with Mr. Jacobson, was in late '70, when you went to work with the State authorities, which was the first time you worked with any State authority in August of '71, why didn't you mention Mr. Jacobson to them?"

And here's what his answer was:

"I don't know why."

So I followed it up and I said, "You don't know," and his answer was, "No."

I asked the same question of Mrs. Lissauer. Page 769. I was questioning her about all the threats she said she underwent from January of '68 until March or

of '69. And I said to her:

"As all this was going on, why didn't you call the police?"

And here's what her answer was:

"Because I needed to keep my store open and I needed to support my children."

Now, does that make common sense to you, the reason that she didn't report this for three years is not because she was afraid, but because she needed to keep her store open to support her children.

Well, my God, I would think that the best way to keep the store open and the best way to support your children is to get this man whose been terrorizing you off your back. And how do you get him off your back? Youcall the police.

So in both instances when I asked them the question, which, as I say, if you believe them, common sense would dictate that they would say that.

Nadborne says, "I don't know."

Lissauer says, "Because I want to keep my store open to support my children."

Doesn't make sense. It doesn't make sense.

Nadborne, he got up and he testified and he told his story. Well, it's easy to tell your story on direct

examination. You're asked questions. "What happened next"? You tell them. It's not that difficult a chore. But let's see how Lissauer's testimony and his story stand up against common sense.

Question: -- and I haven't got the answer for it.

Why did Nadborne hide his meeting with Mr. Jacobson before this loan in question which took place in February of 1969?

I think he testified that there was a prior loan in late '68. But why did he hide the fact that he was at this bar mitzvah in October of '68, the Wissner bar mitzvah.

That's the book I introduced yesterday with the picture. And pictures don't lie. It shows Mr. Nadborne a bit different than he looked when he testified in Court. He didn't have a beard. But why didn't he mention that? And if he didn't mention it, isn't it fair to assume he was hiding it?

And why didn't he mention about the social occasion between October 1f '68 and the bar mitzvah of February of '69?

Nothing illegal about going to a sisterhood meeting or nothing illegal about going to a bar and

watching a show. So why didn't he -- why didn't he mention that?

Well, I submit that common sense says that he didn't want you to know about it. He didn't want you toknow that he was friendly or on at least some type of social basis with Mr. Jacobson. Because if you knew that, then it's not so strange, so unusual for him when faced with a bar mitzvah for his son that he couldn't pay for because of gambling or whatnot, to go toa person that he knew and ask for a loan. It does sound strange if he goes to a stranger and asks for a loan.

And that's, I submit, what he wants you to think.

Because common sense now, why did he hide it?

Another question I have to ask and again I can't answer it. Do you recall when I asked Mr. Nadborne why he became an informant, and he said, "I am not an informant. I am an investigator."

Well, using his definition, let's call it an investigator. He said that he volunteered his services to a Mr. Barnett, who at that time was a member working for the motor vehicle department. He said he volunteered his services. So I followed that up with a question. I said, "You mean it was a -- you were doing your pat-

riotic duty?"

And he said, "Possibly."

So he is telling you that he had troubles. He wanted to clear up his life, turn over a new leaf, live the good life and volunteer his services. And yet, in September of 1972, he testified under oath at a hearing in volving Mr. Barnett before the Motor Vehicle Department -- and that's what I read to you yesterday -- he said under oath when he had motive to testify falsely against Mr. Jacobson, because at this hearing before the Motor Vehicle Bureau, Mr. Jacobson wasn't involved at all.

He said, "I didn't volunteer my services to Mr. Barnett. He came to me and he told me he had me cold. And he told me he knew all about my dealings with stolen cars and I got scared. And he told me that if I would decide to tell everything that I knew, it might do me some good."

R3 fls

(Continued on next page.)

JR:MM
T2R3

Why -- common sense now -- why would Mr. Nadborne have changed that episode in his life?

And I submit to you that the reason is, is that Mr. Nadborne was a man who found himself caught cold, to use his own language, and to get out of the predicament that he had gotten himself into with all these stolen cars, and he decided to make a trade, information for protection.

"Don't prosecute me. I will tell you things that you want to know."

And in 1969 it began to snowball. And by snowball I mean that after he began to tell them what he knew about the stolen cars, all of a sudden a new horizon opened up for him and the new horizon was money.

He was a man that by his own gtestimony went from job to job. He was making a good living at Parkway Ford, $28,000 a year for as long as he stayed there. Then he was fired because he was keeping deposits in his pocket. And all of a sudden he's making a $1,000 a month, plus getting rewards. He acknowledged getting rewards of 2500, $3,000, $20,000 at one pop, and all the while getting a $1,000 a month. That's not bad money. But he has to do something for it. And what he has to do is to accuse people -- to accuse people.

Because no pay, no testifying

And I am using the word "accused" because if you will recall when he was asked questions about narcotics arrest that he had caused, stolen cars arrests that he had caused, he knew every detail up and down. And yet he seemed to become uncomfortable on the stand when I confronted him with the fact that in the last year and a half he had accused five other individuals ofthe same type of accusation that he's making against Mr. Jacobson and none of these people to his knowledge were convicted.

So I submit to you that here was a man who boxed himself into a situation where he could make money by making accusations against people. I confronted him with the fact that his phone had been tapped by the District Attorney of Kings County. And he said he's a stupid D.A. The District Attorney is stupid, was his response.

I confronted him with the fact that in May of last year a U.S. Attorney, Assistant U.S. Attorney, enjoying the same position as the prosecutor in this case, stood in this building before a Federal Judge and said to the Judge, "Our main witness is Mr. Nadborne And from August of 1972 until January of 1973, Mr.

Nadborne has refused to testify. He's refused to testify in Court. He's refused to testify before Grand Juries because he was taking off subsistence," which means because the money stopped coming in to him. And Mr. Nadborne under oath says, "That's not true. I was off subsistence for a month, and what the U.S. Attorney said to the Judge was not true."

And it was pointed out that because of what the U.S. Attorney said to the Judge, that cas that Mr. Nadborne was scheduled to testify in, was dismissed.

Now, common sense, ladies and gentlemen, whom do youbelieve? Do you believe Mr.Nadborne when he says, "That's not true," or do you believe an Assistant U.S. Attorney who goes up to a judge and has a case dismissed and puts on the record in open Court the reason being that Mr.Nadborne refused to testify from August of '72 to January of '73 because the money stopped.

Now, if you are telling the truth, why stop? Why be dependent on money? Why didn't he go out and get a job? Why must the man be paid for testimony? No ticky, no laundry. No pay, no testimony.

Common sense now, is that consistent with him being a truthful witness? Whose right? Is he right?

Because if he is, then a U.S. Attorney who had a

case dismissed was wrong and deliberately gave false information to a judge.

And common sense, I submit, tells you that that doesn't happen.

Mr. Nadborne admitted that when he was relocated in 1971 -- and by relocated, that's when he said the Federal people came in and sccoped him up with his family and put him someplace else, which is to go into hiding because you're afraid -- well, I said to him -- this is in '71.

"You claim your last contact with Mr. Jacobson was in '70 and he threatened you, and, according to you, was Mr. Jacobson one of the reasons that you went into hiding," and he said "No, nothing to do with Jacobson. It had to do with two other individuals."

"Jacobson," he said, "Was not one of the reasons for my leaving."

And I ask you to use your common sense and say, well, how does that fit in with all that he says Jacobson did to him?

Because if he is telling the truth, I would think he would want to hide from Mr. Jacobson. If he is telling the truth.

And, again, I am trying to hit the meat and

potatoes of this case. I am not trying to be technical or trying to mix you up with technicalities. I am talking plain, hard facts.

Ask yourselves this: does it make sense for a man, Mr. Nadborne, who, according to his testimony, was told by Mr. Jacobson, "You're the security for this loan, your body, your hands, your legs," what have you.

Does it make common sense for that man who supposedly received these threats to one month later invite this man that supposedly threatened him to his son's bar mitzvah?

BS fls

(Continued on next page.)

MR. ALCH: (Continuing) I man, it doesn't make sense, does it?

And then I asked him, "Well, was it because you wanted the hundred dollar gift?"

He said, "Yeah."

Money must an hell of a lot to this guy for him to invite to his own son's Bar Mitzvah a man who just weeks ago told him that his security for a loan was his body -- does that make sense?

Would a reasonable man in that position do something like that?

"Come, join my family, sit with my relatives and friends at a joyous occasion. Thank you very much for your hundred dollar gift."

It doesn't make sense.

He borrowed money from Mr. Jacobson to pay the caterer, then he stiffed the caterer, and now he is claiming that Mr. Jacobson threatened him with regard to the loan. Net result: He beats the catering bill and he beats Mr. Jacobson. Not a bad idea.

I am not saying, and indeed I think the prosecution may say to you that the law can't function without undercover agents, and that's true,

they are necessary. But talking sense to you now, I submit that there are undercover agents and there are undercover agents.

If you have a man who is actually employed by the Government and is a police officer, an FBI agent, and is sent on the street to work undercover, that is legitimate, necessary and proper. When you have a man who did the "undercover work" -- I call the informant -- that Mr. Nadborne did, that is not illegal. That is not illegal but it takes a certain type of man to act that way.

Not everybody can go back and resume contacts with people that they knew, with people that they had been involved in stealing cars with, and have telephone conversations or set up arrests with these same people that they had formerly been friendly with, and were holding themselves out to be friendly with, it is not illegal but it takes a certain type of individual to do that.

A lot of people wouldn't be able to do that. Their conscience would bother them.

If you are that type of person who can do that, who can be friendly with someone on Monday and then Wednesday begin to be an informant or an undercover

agent, as Nadborne was, and then on Friday of the same week, go back to the fellow and say, "Hey, remember me, I'm a guy who used to sell you stolen cars. I'll sell you another one a week from today," and have the police notified, and all of a sudden when he meets the friend the police swoop down and arrest him; it is not illegal, I'm not saying it is, but it takes a certain type of individual, and that type of individual is unique enough to become hypnotized by the money and to become -- to be boxed in.

Here is what I mean by boxed in. Let's face it, as these actitvities of Mr. Nadborne, acting in this capacity of turning in those who were engaged with him in illegal activities to the police, and keeping the police abreast of everything that is going on, as these things were happening he surely must have known that he was making a list of enemies. That is sense.

And in that situation, as his list of enemies grew, it was like the old gag about when you paint a floor you find yourself -- if you don't do it properly, you paint yourselv into a coner where you can't get out.

4 Summation - Alch

I submit to you that that is what Mr. Nadborne did. He painted himself into a corner because as he began and continued to inform on these people his list of enemies grew, and he knew that the safety that an ordinary person enjoys walking the street during the day -- I won't say at night because of the times we are living in -- didn't apply to him.

When you find yourself boxing yourself in that way, you find yourself saying, you know, that money, the thousand dollars a month, those rewards, 3000, 20,000, very tempting, and all I have to do for it is keep accusing, and it beats going out in the street where all these people are there that I have turned in.

So I submit to you that this type of individual who would even undertake to act that way can very easily be tempted by money and will cross the line between fact and fiction, because having boxed himself into that corner, if the only way to keep that money coming in to him is to keep making accusations, he is going to keep making them, and if he has to stretch a little, he'll stretch, and if he has to lie a little, he'll lie.

That is the type of a man whose testimony, along with the other evidence, you must believe beyond a reasonable doubt, and I don't think you can.

What's probably the most important aspect as far as a flaw in his testimonh, Nadborne's testimony? Here is what I think it is: You recall that the evidence showed that in 1973, last year, he was on trial -- not on trial, he was involved testifying in a case against somebody, and a question was asked of him under oath, and the question was -- this question was asked last year in '73 -- keep in mind that his last contact with Jacobson was in '70 -- Jacobson, according to him, the episode was from February of '69 to sometime in '70.

Now, in '73 he is asked under oath: "Mr. Nadborne, since 1968, have you ever been threatened by anyone in relation to any extortion?" That's what we are in court about here today with regard to Mr. Jacobson, and that's the question that he was asked last year: "Since 1968, have you ever been threatened or extorted by anyone?"

ANd he says, "Yes."

"Who?"

"A man by the name of Sonny Black."

I don't know who he is, but he's not Ralph Jacobson. Why didn't he quote, comma, "and Ralph Jacobson."

If he's telling the truth and this question is thrown at him, why would he not mention Ralph Jacobson?

What does your common sense tell you about that?

With regard to Mrs. Lissauer -- please understand that in referring to her I'm not looking to crucify her; she may very well be the object of sympathy in your minds, but I must concern myself with regard to whether or not she is telling the truth, and that necessarily involves examining the type of woman that she is.

I dont care how you look at it, a woman that is emotionally disturbed enough to go to a place like the Long Island Consultation Center on two or three occasions before she claims ever having met Mr. Jacobson, a woman who has and brings up twin sons with the particular characteristic traits that they acknolwedged on the stand--you know what I'm talking about -- a woman who is -- who gets caught shoplifting, a woman who says her son stole from her,

her son says that he stole for her; a woman who rips a phone off a wall and threatens her father with a phone --

MR. WEINTRAUB: I must object.

Lumping sons together --

THE COURT: What?

MR. WEINTRAUB: Lumping the two-son references together --

THE COURT: I don't think we have any substantial testimony at all with respect to the second son.

MR. ALCH: My recollection is that Joel Schneider testified that his brother had similar traits, but --

THE COURT: Oh, yes, that is all right.

MR. ALCH: That's what I was referring to.

MR. WEINTRAUB: The next reference you made --

THE COURT: You fall into the practice of using the plural.

MR. ALCH: I see.

What I meant was one of her sons stole from her and one of her sons stole for her -- it's not that important whether it's singular or plural, but the important thing is that there is something wrong with the woman, something wrong with her.

I don't mean to pick on a woman, but you have to take that into consideration in judging her credibility. A woman with that type of a track record, there is something wrong with her.

I submit that when you were watching her testify she was being a bit theatrical. You saw her, you saw her mannerisms, th convenient crying -- and by convenient, I mean just when I was building up to a point in my cross-examination -- that must be considered by you, I submit, in determinint whether or not she is telling the truth.

With regard to these memoranda, which the Government introduced into evidence, and the prosecutor will ask you to believe that those reflect payments made by Mrs. Lissauer to Mr. Jacobson, well, first of all, do you remember what she said when she was shown the papers?

She said, "I don't even ..." even after looking at it. She holds it, looks at it and says, "I don't recall making a payment on that date," because the prosecution specifically said, "Do you recall on that specific date?" Even after looking at it, with the date on there, and each one of these things is dated -- maybe when the question is asked of her, "Do

you recall making a payment on June 5?" And she

And she says, "No, I don't." My Lord, when you show her something in her own handwriting with a date on it, and she looks at it and says, "Yes, there is my handwriting, there is a date, there is a notation which to me means a payment. I still don't remember anything about it."

What is going on here?

I mean, that doesn't make sense. She testified that Mr. Jacobson would be in at least once a week, every week, and most of the time twice a week. She said her dealings with Mr. Jacobson went from January of '68 to March or April of '69. Well, you are dealing with a -- what's the mathematics here? --I think you are dealing with 64 weeks. If she made a memorandum everytime she made a payment, why are there only 19 memoranda there? There should be 64.

The total of these memoranda is, if you want to add them up, is $1940. She claims she borrowed $2800.

Most important about these memoranda, and what I submit to you is the inaccuracy of them, is that here is a woman that writes everything down. She

chu. s pens at will, she carries things in her pocketbook, she carries this type of book, that type of book, calendars, yellow sheets, white sheets, she writes everything down.

Why haven't you got in evidence any memoranda reflecting any threats? Because,as the Judge has told you and as I told you, and as the Judge I'm pretty sure will tell you again, you got to have threats beyond a reasonable doubt in order to find Mr.Jacobson guilty.

It's not enough for a loan, if you believe a loan was made, it's not enough for illegal interest, if you believe that was paid, you must, in order to find Mr. Jacobson guilty beyond a reasonable dbout find that there were threats made, and I submit that common sense says that if this is a professional writer, writing everything down on different scraps of paper, whatever she has on her, why haven't you got in evidence to look at, memoranda saying Mr. Jacobson threatened me?

MR. WEINTRAUB: I would have to object to that, your Honor.

THE COURT: I don't know the basis of it. There are none in evidence, as I recall.

MR. ALCH: You recall her testimony with regard to when I was asking her about this fire that she claims that,I think it was in 1968 or '69, whenever it was in that period, she claims that Mr. Jacobson said ,"Go get your records from your house." She brought them down, she found him sitting in the store and she thought he had taken the records reflecting payments out of her desk and I asked her if these were voluminous. SHe said yes, and she says,"He put them in the ashtray in the middle of the store and set fire to them."

Well, that doesn't make sense, but a lot of things that happen in life don't make sense, but what should come to your mind is, a bizzare incident of that sort, a barnfire in the middle of a store, surely there must be somebody who can come in and corroborate that.

I mean, that is something you just don't forget if you see. If it happened the way she said it happened, people should see it and remember it. A man just doesn't take records covering months and months, according to Mrs. Lissauer, and put them in an ash tray and set fire to them.

I asked her who else can corroborate that and

she doesn't know. In fact, no one did corroborate that fire.

Does that make sense with regard to whether she is telling the truth?

The delivery of these memoranda to the Government, she said that she began delivering them in '72 and there were deliveries in '73. That doesn't make sense. I mean, you don't have to go to FBI school to imagine that if a woman makes a complaint the way she is making a complaint to the FBI and says, "Here is memoranda proving my charge against Mr. Jacobson, and I've got more of them in my house," I would think the FBI would go down there with a truc, immediately and put everything out of her closet and load it on the -ruck and come back and they will do the examining, they won't leave it to her to pick out anything as to what is relevant and what is not relevant.

Yet these were staggered deliveries, she would come back and say, "Here is some more," she would come back and say, "Here is some more."

Common-sense-wise, how strong does that make these memoranda?

Again, I ask you to call into play your common

sense with regard to the incident when she claims IRS men were in the store and Mr. Jacobson came and loaned her money for a second time and she walked up to the IRS men and, according to her, said, "Look, you made me go get the money from a loan shark."

I asked her what did the IRS men say --

MR. WEINTRAUB: Objection.

THE COURT: I'm sorry?

MR. WEINTRAUB: I object.

MR. ALCH: On what ground?

MR. WEINTRAUB: I am going by my memory, but I don't believe that was the testimony in this trial.

THE COURT: I'm afraid it must be for the jury to rely on its own recollection in such matters. If it seems to you important and you are in disagreement about what the testimony was, then as you know the testimony has been transcribed and you can ask to have the testimony reread.

MR. ALCH: Thank you.

I recollect she used the word "shylock" -- loanshark, shylock, the gist of her testimony was that she went up to the IRS -- use your own recollection -- but I'm pretty vivid on this, she went up to the IRS men and said, "Look what you made me do.

I have to go borrow money from a shylock or a loan-shark."

Bring into play your common sense,wouldn't you expect the IRS men to say, "Who? Where is he? Give us details. That's a crime."

If it's accompanied by a threat it's a crime. Yet she claims that the IRS men said, "We don't care where you got it." That's like someone running into a police station and saying, "I just witnessed a murder." And the policeman says, "Well, I don't care, I have to finish my sandwich. Go home."

Things like that just don't happen, using the best barometer I know, and that's common sense.

Why would she borrow a third time from Mr. Jacobson? Remember, she said there was a third time in which she borrowed rent and paid it back the next day. If she has been constantly threatened, I ask you -- common sense, if a man is threatening you the way she says Mr. Jacobson was threatening her, with words, with physical actions, with a gun, would you go back to him and say, "Loan me money to pay my rent and I'll pay you back tomorrow," and she did, by her own testimony?

Common-sense-wise, is that consistent with

her allegation against Mr.Jacobson?

You recall when I told you before about when I asked her if she was so afraid why didn't she call the police, and she said it was to keep the store open, which I submitted to you didn't make sense, there is another instance in her testimony which really illuminates on that point, and that is when she claims that Mr. Jacobson was in there and attempting to remove merchandise from the store when he learned about the bankruptcy.

Regardless of how afraid she had been, and that is something for you to decide, but even if she was terrified, she finally picked up the phone and called the police.

Now, if what she was saying with regard to Mr.Jacobson was true, if he really had threatened her the way she claims he did, and there he sees her calling the police, please use common sense again, wouldn't he get out of there before the police came? But, no, he stays there, and finally the policeman shows up. There were two of them, we heard from one of them, in uniform. And at last, at last, if you want to believe her testimony, she had summoned up the courage to overcome her terror and at long last there was a policeman and there

was Mr.Jacobson together in the same store at the same time.

Wouldn't you think that at that moment, if she is telling the truth with regard to all of these threats, wouldn't you think that at that moment with the policeman standing there she would at long last say, "This man has been threatening me. He's loaned me money and he's threatened me when I didn't have the means to repay it. And he threatened me with a gun. And he pushed me."

Doesn't your common sense tell you that she'd say something like that? Doesn't your common sense tell you that Mr. Jacobson wouldn't have waited for the policemen to arrive? What does she say? She says to the policeman, "He's trying to take merchandise out of my store, but I am in bankruptcy."

According to the policeman, who was not my witness, he was called by the prosecution, but in answer to my questions, the policeman said, "All Mr. Jacobson told me was that she owed him money. He had a piece of paper in his hand which he said purported to show that she owed him some money, and that he wanted to take merchandise out for it because she was going bankrupt."

The police officer said, "I told Mr. Jacobson that since it's in bankruptcy, he can't do it."

What did Mr. Jacobson do, he put the clothes back and walked out with the policemen.

"Was Mr. Jacobson discourteous to you, Officer?

"No."

"Did Mrs. Lissauer say anything to you about threats?"

"No."

All of this is consistent with the testimony of Mr. Jacobson's wife with regard to what she recalls happening when they got those bankruptcy papers in the mail, and she turned to her husband and pointed out that he was listed as a creditor for $25000. According to her, he said, "I'm going down to the store, if she's going bankrupt I'm going to either get my money back or take some merchandise."

But aside from it fitting in or corroborating Mrs. Jacobson's testimony, why didn't Mrs. Lissauer make any mention of these terrible, terrible threats to the officer? And why, common-sense-wise, did she list Mr. Jacobson as a creditor on the bankruptcy papers?

BS
Reels 2
ws.

MR. ALCH: (continuing) Not only did she list his name as a creditor, but she listed him as an undisputed creditor. "Undisputed" means that the amount that you put down you don't argue with.

So here is a woman asking you to believe that there were loans and threats and she never knew how much was due her, and yet, when she goes to her attorney, she has him list on the bankruptcy papers the name of Ralph Jacobson as an undisputed creditor; she has no argument with it.

Talking about that, why didn't Mrs. Lissauer mention it to her attorney? Again common sense, if what she says is true, and you are sitting down with your lawyer, and you are giving him a list of creditors, when you come to the name of Jacobson, why didn't she say, "This is the guy that's been threatening me"?

She told him about this Waterman. Why didn't she mention Jacobson to him? She testified she gave him slips of paper with Jacobson's name on it, and according to her, her attorney said, "I don't want them. They are personal matters and not important to me."

He denied that she ever mentioned any threat

in connection with Mr. Jacobson.

Most important of all, do you remember the incident with regard to Mr. Nadborne and the Sonny Black question, when he was asked on the witness stand, "Since 1968, who has threatened you?"

And he only mentioned this Sonny Black person.

When Mrs. Lissauer was testifying under oath in the bankruptcy proceedings in 1969, after the chapter, according to her, with Mr. Jacobson was over, she was asked a question, "Will you give us a change of address if you should move?" And she didn't respond to the question. She blurts out under oath, "A man has been threatening me. He's put a contract out on my life. He's following me. He's following my daughter to school. He's waiting for me in hallways.

"Tell us who the name of this man is.

"A William Bradford Waterman."

Doesn't common sense tell you that if what she says with regard to Mr. Jacobson is true, that when she volunteered, and by volunteered, she did it right out in answer to a question, "Will you give us your new address," when she volunteered the name of Waterman, wouldn't she have made an oblique, an

indirect reference to a man named Jacobson, who had threatened her the way she claims he threatened her? She was under oath; she was asked, "Have you been frightened by this?"

She said, "Not to the extent that it's prevented me from coming here."

So if the threats from Waterman did not prevent her from testifying in open court, why didn't she mention the threats from Jacobson, if they had occurred?

I suggest that your common sense tells you when you think about that incident, that that is inconsistent with her telling the truth.

She never mentioned Mr. Jacobson or anything about threats to Mr. Booth, who was the attorney for the trustee in bankruptcy, and yet Mrs. Lissauer claims that at one point she picked up the phone to Mr. Booth and told him to take Mr. Jacobson off the bankruptcy papers.

Mr. Booth has no recollection of that. He said it didn't happen.

You saw people get up there, including at least one attorney, who testified that in the community, Mrs. Lissauer does not have a good

reputation for telling the truth. And that's what the game is all about, telling the truth.

Here are people, two attorneys, her own attorney, Mr. Gewanter, and Estelle Herman, two attorneys getting up under oath and saying, "We know of her. We know other people that know her. Her reputation for telling the truth is very bad."

That should be, I respectfully submit, considered by you.

The prosecutor, when he talks to you, will try to tell you about corroboration of the testimony of Mrs. Lissauer and Mrs. Nadborne. Well, with regard to Mrs. Lissauer's testimony, her son Joel took the stand and testified that he had seen threats, etcetera. But I again ask you to evaluate the man you are being asked to believe. Aside from his personal characteristic, which in my mind doesn't jibe with him holding a classified job dealing with nucleau material, I would think the Army is more security minded than that, but putting that aside, he is a man who says that he was giving his mother money to allegedly repay Mr. Jacobson. Where was he getting the money? He was getting the money from Howard Johnson Restaurant.

When was he making these payments?

In '68 and '69.

You heard that Mrs. Shamis testified that for the entire year of 1968, the man made something like $378 for the whole year.

MR. WEINTRAUB: Objection.

THE COURT: What was it?

MR. WEINTRAUB: Mr. Alch has the exhibit. I believe it is $800.

MR. ALCH: Fine. $800 for the whole year. I don't think that is a crucial difference.

He has only made $800 for the whole year gross. Average that out to take home a week. For the period of time in 1969 that he worked for Howard Johnson, he made a staggering total of $7.91.

Where was he getting the money to loan his mother? He claims that he was a night manager and doing all sorts of odd jobs, and Mrs. Shamis said that the records reflect him as being a counterman, period.

If he had any other jobs, the records would show it.

That is not a very important thing to say

whether or not you are a counterman at Howard Johnsons, but why would he misrepresent that to you? I submit it is because he had to justify giving his mother the money. In order for you to believe that he gave his mother money, you have to believe he had the money to give her, and he certainly didn't get it from Howard Johnson's; I don't care how many tips he received.

With regard to Mr. Snyder, Joel Snyder, his fuzzy memory -- he had absolutely no recollection of dates -- I ask you to consider this with regard to whether he is telling the truth.

By his own admission, he left this area in 1969. Three years go by. Suddenly he gets a call from his mother. He is in San Francisco, he gets a call from his mother in 1972 and she says to him, "The federal authorities want you to come down and testify and corroborate my charge against Mr. Jacobson."

Now, common sense, what would you think a son's reaction would be if he was in a position to corroborate it? "Of course I will. You should have done it a long time ago."

But he says, "I told her absolutely not. I

didn't want to get involved with it." She hangs up; end of conversation. He refused to corroborate his mother's testimony.

Then what happened? The next day or two days after that, he is hit with a subpoena from the federal authorities. That changes his mind.

You will recall at the end of my questioning Joel Snyder, I said to him, "Tell the jury how much money you have received from the Government in the last 10 months." And he says, "Well, they gave me plane fare, meals, $10 a day. Is that it? That's it."

And then, by stipulation, which means that it is a fact, you were advised that Joel Snyder, in the last 10 months, had received over $9,000. There is nothing wrong with receiving $9,000 under any type of Government program, but the questionmark is; why lie about it?

Why change -- why make it seem like pennies for plane fare and meals and $10 a day when, in effect, you are getting over $9,000 in a period of 10 months? That isn't bad for a fellow who made 800 bucks in one year's gross at Howard Johnson's Restaurant, not bad.

So if you put that chronological order of facts in your mind, "No, mother, I don't want to testify." Subpoena. Money that he is reluctant to reveal the amount of, doesn't that, even your common sense, suggest to you that he said no to his mother and yes to the federal authorities?

The prosecution may point to Mrs. Nadborne as corroboration of her husband. You may recall that when I cross examined her, I asked her if she knew about her husband's activities in stolen cars, which has been the bulk of his life until recently -- "No."

"Did your husband ever tell you about this?

"No.

"Did you know that he was gambling and in debt?

"No."

She only knows what her husband tells her.

(continued on next page.)

MR. ALCH: (continuing) Why was it Mrs. Nadborne, why didn't she, in answer to the question, "When did you first meet Mr. Jacobson?" -- her reply was, "At my son's barmitzvah in February of '69.

Yet we have heard testimony -- testimony you can disbelieve, pictures, I submit it is pretty hard to disbelieve, there they were together at the same affair in October of 1968. Why her reluctance to acknowledge that? Because, as I pointed out to you before, for someone to borrow from a friend is one thing, for someone to borrow from a stranger is another, and they wanted to paint Mr. Jacobson out as a stranger.

She also said that at the last contact that she claims was had between Mr. Jacobson and her husband, her husband told Mr. Jacobson to get out of the house. I said, "What did Mr. Jacobson do?"

And she says, "He got out."

I ask you whether, using your common sense, that type of conduct is consistent with a man who is threatening Mr. Nadborne the way Mr. Nadborne says my client was threatening him? Get out! Okay, I'll get out.

Now, Mr. Weintraub may -- when he speaks, by the way, I don't have a chance to get up and answer him -- you are probably grateful for that -- but in any event, I haven't got the chance. I wish I did have the chance. I think I could refute what he said, or what he is going to say, so I can only try to anticipate what --

MR. WEINTRAUB: I have to object to what Mr. Alch thinks.

THE COURT: Could you read that, please?

(Record read.)

THE COURT: That is a statement of opinion, and you must take statements of that sort as containing a great deal of rhetorical license, and counsel cannot state that to you now.

MR. ALCH: I can only anticipate what he is going to say.

Now, the prosecutor may say a loanshark is an evil person who preys on the poor and defenseless. My response to that would be, hold on, wait a minute, that's what we are here for, that's what we are here for, to determine whether or not there were any threats made in connection with the loan, and Mrs. Lissauer and Mr. Nadborne are far from what you would

call poor innocent people.

The prosecutor may argue to you that, well, where there is smoke, there's fire. If it was just Lissauer complaining against Jacobson, that's one thing, but when you have Lissauer and Mr. Nadborne, that's two people, lightening doesn't strike twice in the same place, but that is what we call bootstrapping, because his Honor will tell you that you must decide the elements of each claim by Mr. Nadborne, the claim by Mrs. Lissauer, on their own elements, and if there is a reasonable doubt with regard to Mrs. Lissauer's claim of threats and loans, you must find Mr. Jacobson not guilty, and the same if there is a reasonable doubt with regard to the accusation of Mr. Nadborne.

(continued next page.)

MR. ALCH: (continuing) The prosecutor may say, "Well, what about the barbershop? Does that tie Mr. Jacobson in?"

To what? Mr. Jacobson -- what is the implication that he frequented a barbershop? Is that so unusual when you consider the fact from the barber himself, that Mr. Jacobson grew up in that area? He worked as a shoe-shine boy. His family did -- came in once a week. He was a steady customer. That's reaching, I submit to you.

The evidence must be pretty thin for them to use that argument.

Now, you will notice that in effect, this is a chart. I have seen it and I presume you will see it when the prosecutor gives you his final statements, final arguments.

And it's a chart which he will use to dramatize the instance with regard to phone numbers that were found in the possession -- that were in the possession of Mr. Jacobson in 1972. And what the prosecutor will argue to you is this: he will say to you that these numbers, or certain of the numbers that were on this piece of paper that Mr. Jacobson had in his possession were in some sort of a code. An

he will say to you that the code is, if you subtract the last four numbers, each of them from 10, and that's the true number. So if you have a number like 222, that would stand for 888. And using that type of interpolation of numbers, the prosecutor will show you that using that -- one of the numbers turns out to be the coffee shop that the witness Barry Gold had an interest in, and that another number is the number of Winmar J. Ford, which was the place that Mr. Nadborne worked at, and that another number, using that formula, is the place of Parkway Ford. Or what he may say is that that's the number of X on the sheet or the piece of paper that Mr. Greenberg, from Parkway Ford, came in with. It had two numbers beside the name of Marvin. And the prosecutor will argue that using that formula, one of the numbers on the piece of paper turns out to be one of the numbers on Mr. Greenberg's telephone pad.

But I ask you not to be misled by that camouflage of code. Because I ask you to ask yourselves, number 1, what is so sinister about having any form of Barry Gold's number in your book?

Barry Gold testified that he was a friend of Mr. Jacobson for some 22 or 23 years, and that he

had made a loan from Mr. Jacobson pursuant to their friendship of $2,000, and he paid it without interest and without threats.

And I remind you that when you heard from an FBI agent who tried to contradict the testimony of Mr. Gold, you only heard one-half of the story. He only told you the FBI agent did have one interview with Mr. Gold where he claims Mr. Gold mentioned interest. And then when I cross examined him, I brought out a later interview, a more recent interview, and there was no mention of interest.

Ask yourselves, what is so sinister about carrying the number of a public dealership that is listed, Winmar J. Ford? What is so sinister about that?

And ask yourselves this question, if it is as the prosecutor would have you believe, -- that is, he's going to ask you to believe that these were coded numbers in the possession of Mr. Jacobson, in 1972, reflecting the numbers which he could get a hold of Mr. Nadborne, and the reason they were in code is because Mr. Jacobson was trying to hide something -- if that is true, ask yourselves, why Mr. Jacobson didn't have in code or otherwise,

Mr. Nadborne's home phone. Because Mr. Nadborne testified that he was getting constant calls to his home. And his wife testified that their both phones were unlisted.

So that if there was anything sinister involved in Mr. Jacobson carrying around telephone numbers that he wanted to disguise, the number that he would want to disguise, in view of his having that access to the telephone numbers, and if Mr.Nadborne told him about all these calls, it would be the phone, the unlisted phone in Mr. Nadborne's home. And there is no evidence that the numbers on the piece of paper that Mr. Greenberg from Parkway Ford showed you, was Mr. Nadborne's home. No evidence whatsoever.

Mr. Greenberg said that wasn't in his handwriting. Everything on the page was in that telephone pad, but that entry wasn't. And I asked him, "Do you know who put them there?"

He said, "No."

I said, "Do you know whether those numbers are true numbers or accurate numbers?"

He said, "I don't know."

And the point is, that the Government had Mr. Nadborne on the stand and Mrs. Nadborne on the

stand, before they called Mr. Greenberg and introduced that telephone pad from him and before the stipulation was made to you with regard to telephone numbers that Mr. Jacobson had in his possession.

So why didn't Mr. Weintraub ask either Mr. Nadborne or Mrs. Nadborne what their telephone numbers were in 1969?

And I submit to you that if their telephone numbers were in code, their unlisted phone numbers were in code, or otherwise reflected on the piece of paper that Mr.Jacobson had in his possession in 1972, which would have been a sinister fact, that would have been brought out to you by the prosecutor.

So how sinister could it be to have the number of Winmar J. Ford, a coffee shop, Parkway Ford?

But if he was really trying to hide something, wouldn't he have hidden or attempted to hide Mr. Nadborne's unlisted phone? And there is no evidence of that whatsoever.

In conclusion, ladies and gentlemen, I ask you to remember this:

When a person approaches a law enforcement agent and accuses another person of a crime, the

first, if not one of the first things he is asked is, -- or she is asked is, who can corroborate your testimony. That's basic.

Mr. Nadborne told the investigators that two people knew that he was indebted to Ralph Jacobson. And who were those two people that he told to corroborate him? Mr. Greenberg and Mr. Anderson from Parkway Ford.

I asked Mr. Nadborne that. He said, "Oh, yes, they know about it. They can tell you it."

And when each of them took the stand, I asked them, Mr. Greenberg, and I asked Mr. Anderson, I said, "Mr. Nadborne has told the jury that you know that he was indebted and making payments to a man named Ralph or Ralph Jacobson" and each of them said, "We have no such knowledge."

When Mrs. Lissauer was asked for corroboration, she said, "Well, there were some customers who may have been in the store with Mr. Jacobson".

Mr. and Mrs. Harry Spar, they came up to the stand. They don't know anything about it.

" Go and see Mr. Esposito."

Mr. Esposito came up to the stand. He doesn't know anything about it.

She said, "Go see Estelle Herman. I definitely told Estelle Herman that I was indebted and making payments to Ralph Jacobson. I discussed it with her."

Do you think an attorney would come in and lie? That's what it boils down to. Because Mrs. Herman said, "I don't know anything about it. She never mentioned it to me."

And that was an instance where Mrs. Lissauer didn't say, "Maybe Mrs. Herman can corroborate me."

She told the federal authorities,"I know she can because I discussed this with her."

And here comes Mrs. Herman saying, "I don't know anything about it. She never did."

She also mentioned the name of an ex-police-woman, Mrs. Rogoff. She wasn't available to testify. And I read you her testimony. And if called, she would testify -- she would have testified in person and would have told you what she said when she testified previously on the same matter that she doesn't know anything about it either.

There are four people -- five people that Mrs. Lissauer said to the federal authorities, "Can corroborate my story."

And none of them could.

And Mr. Nadborna pointed to two, and none of them could.

(continued on next page.)

And I ask you whether or not using your common sense, that doesn't establish a reasonable doubt.

Remember how Mrs. Lissauer came into contact with the Federal authorities. We submit that the evidence show that it was in conjunction with a bankruptcy fraud. Mr. Gewanter said he got a call in the spring of 1972 from someone from the FBI wanting to know where Mrs. Lissauer was in connection with a bankruptcy fraud. And, indeed, there should have been an inquiry, because by her own admission she was taking funds from the store just before she went into bankruptcy and putting them into a phoney bank account with the name of Pamela Garrien. That's something you don't do or shouldn't do when you're declaring a bankruptcy. That's concealing assets.

She listed a man by the name of Morris Kaplan owing her 8 thousand or 88 hundred. And now in court we find he only owed her 8 hundred.

And the prosecution trying to negate that puts on Special Agent French, who says that he didn't make any calls about that topic. Well, there are plenty of FBI agents who could have. And Mr. Gewanter was quite certain that he received a call with regard to a bankruptcy fraud.

So I submit that that is how Mrs. Lissauer came into contact with the Federal authorities when they were looking for her in connection with the bankruptcy fraud. And they go over the list and she may have said, "Okay, Ralph Jacobson. Even though I've got him as an undisputed creditor, he threatened me."

And Mr. Nadborne didn't yet come into contact with the Federal authorities because he made that his life style. He was with them all the time.

There are portions of the evidence that stay in your mind and I haven't touched, remember them for yourselves whether they are for me or against me. I try to touch the highlights. And I told you at the beginning and I will tell you again, that, yes, there is other evidence besides Mrs. Lissauer and Mr. Nadborne. But they are the chief witnesses. And I submit that in conjunction with the other evidence you must believe them beyond a reasonable doubt with regard to whether or not Mr. Jacobson made any threats.

He made a loan to Mr. Nadborne for the bar mitzvah. And if you believe that, then ask yourselves whether or not you believe beyond a reasonable

doubt that threats were made from a man who enjoys a poor reputation for telling the truth, and ask yourselves when you are in the jury room if you can believe the testimony of a woman like Mrs. Lissauer, who has admitted under oath that on prior occasions she has come into court, sat in the witness chair, taken the oath, and has used crutches to foor a jury.

And she's the type of woman who has feigned illness.

MR. WEINTRAUB: Objection.

THE COURT: I think there was a question about whether it was a judge or jury, etc.

MR. ALCH: To fool a judge. To me, the sin is the same. She is the type of woman who used crutches and feigned illness, needing them to fool a judge. And she says that at the same time she feigned illness, to get sympathy from a judge. And after she was out of court she laughed about it to a friend of hers. That's the type of woman that the Government is asking you to believe beyond a reasonable doubt.

And I submit to you that when you go over these things in your mind that I have no -- I have covered a lot of them -- keeping in mind that in order

to convict, you must find beyond a reasonable doubt, I submit to you, that there will at least exist a reasonable doubt.

And when there does exist a reasonable doubt, I submit to you that you return to this room after your deliverations with a verdict of not guilty.

And I submit that when you do that, you will be able to walk with your head high because justice will have been affected. The evidence establishes a reasonable doubt, and I ask you to find my client not guilty.

Thank you very much.

THE COURT: We will have a recess now and then you will hear the closing argument of the Government.

Please do not discuss the case with one another or anyone not on the jury until it is finally given to you to determine.

(Whereupon, the jury retired from the court-room.)

(Recess taken.)

(Whereupon, the jury entered the court room.)

THE COURT: All right, Mr. Weintraub.

MR. WEINTRAUB: May It please the Court, Mr. Alch, Mr. Jacobson, Madam Forelady, ladies and

5 Summation-Weintraub

gentlemen of the jury:

I'd like to repeat something I said before my opening and I think it's worth repeating.

It is the law. That is, that what I say now, what Mr. Alch has just concluded saying to you before my closing is not evidence in this case. It's argument. The evidence, as I have said before, was the testimony of witnesses, any physical exhibits that were allowed into evidence by his Honor, and what is known as stipulations. That is, an agreement between counsel that might exist or existed.

In the course of my final argument I am going to be discussing with you what I submit the evidence in this case shows, what I submit the evidence is, and what I submit can reasonably be inferred from the evidence.

When you're talking in every day discussion, it's common to say, I think, I believe, phrases to that effect. They don't have any place in the summation. If I slip and I say I believe something, what I mean to say is that I submit the evidence shows that this exists. So please, if I don't put in the phrase, I submit, I will ask you to just mentally put it in for me.

Like Mr. Alch I will be reviewing evidence. I will be discussing it. And it will be my recollection of the evidence that I will be discussing. If your recollection is different, it's your recollection that governs because you are the sole judges of the facts, the facts that occurred in this case as shown by the evidence.

If I do make a mistake, all I can say is it's an accident. We have been through a lot of testimony, a long time, almost two weeks. And I would not do it intentionally. But it's possible that accidentally I have made a mistake. I don't know. I feel that I have an honest grasp of what has happened and of the testimony. And I will be presenting it from my memory in that way.

The crux of the case boils down to credibility, as Mr. Alch mentioned. Do you believe Mr. Nadborne? Do you believe Mrs. Lissauer?

But credibility doesn't only rest on Mr Nadborne and Mrs. Lissauer. Proof beyond a reasonable doubt is not -- does not operate on each piece of evidence in the case. It operates on the evidence as a whole.

You should not consider Mr. Nadborne's testimony

in a vacuum. You shold consider what other evidence there is in the case to support his testimony.

You should not consider Mrs. Lissauer's testimony in a vacuum. That would be incorrect. Because there is other evidence in this case about the same things that she has testified to in court.

Let's start with Mr. Nadborne. I think I told you in my opening that the Government was not going to bring in witnesses, main witnesses as knights in shining armor. If in fact, I submit, that had we brought in witnesses who were pillars of the community, who were people who were in responsible jobs, worked hard every day, paid all their bills, didn't go out, had no flaws of personality at all, that the testimony would then have been incredible.

Who would believe that a man who is the pillar of the community, steady as a rock, with a high paying job was going to fall in the hands of a loan shark? Would that make sense?

Each of the main witnesses here has a flaw of personality. We didn't try to hide that. That's a fact that ought to be considered. And, in fact, it is a fact that I submit makes their stories all

the more credible.

Mr. Nadborne told us he had a high paying job when he first got involved with Mr. Jacobson in 1968. But he also had a gambling problem.

Do you think Mr. Nadborne who is making 25, 28 thousand dollars a year back in 1968 -- more money back then -- do you think if he didn't have a gambling problem he would have had to go to a loan shark for a loan?

He could have walked into any bank and got him a loan just on the basis of his employment. I submit that is so.

What about Mrs. Lissauer? Mrs. Lissauer had a better women's dress business. If Mrs. Lissauer had been able to handle money properly, she would never had to go to a loan shark for money. That bank loan she said she applied for that was turned down, she would have received that. She had a business, stock, customers; but she also had a flaw.

She couldn't handle money.

In fact Mr. Alch's witnesses brought that out admirably. She had a bad reputation. Her bad reputation was because of money. She couldn't

make deliveries on time.

She took deposits. She didn't have dresses ready when they were supposed to be ready.

She went to the Mardi gras. Do you remember Mr. Alch brought that out on cross-examination of Mrs. Lissauer.

"Didn't you go to the Mardi gras?"

Mrs. Lissauer is a financially irresponsible person. She can't handle her finances. She went into bankruptcy, her own personal bankruptcy with her husband in 1963 and she went in as a corporation, Madam Lissauer, Inc., which she ran in early 1969. She petitioned for bankruptcy. The petition is in evidence. Mr. Alch put it in evidence.

Would it make sense that a person like Mrs. Lissauer, who couldn't handle money, would end up going to a shylock, eventually for money to try to keep her business going?

Mr. Nadborne reached the point in his life where he decided to cooperate with the Government for whatever reason. He began to cooperate. His testimony is he did not receive -- he did not receive anything when he started cooperating. He mainly cooperative in the area of stolen cars through

this gentleman, Lee Barnett, an inspector of the Motor Vehicle Department who came to see him. He eventually started cooperating thorugh Lee Barnett with the New York City police and ultimately with the FBI.

He did receive money. He received considerable money for his cooperation. Does that make his testimony unbelievable?

I submit it doesn't.

Let's take a look at some of the things that he received money for. He testified that not only did he just feed back information to the Federal Government and to the City police about illegal activities that he knew about -- and he knew about it because he hung out with the people that were involved in that. There is no question of that. But he just didn't feed back information. He put his life on the line. He went out and set up a buy, a purchase, under cover, of nine pounds of heroin.

Did he receive money for it?

Is it worth your tax dollars to get nine pounds of heroin off the street? Was he lying when he set up that buy? Was he telling a story to the Federal Government?

I submit he wasn't.

Nine pounds of heroin was seized. Six people were arrested. Six people were convicted. Was he telling us the truth? Was he telling the Government the truth?

He set up a buy of a drug called sunrace, a controlled substance which is illegal to sell in this country. The wholesale value is $240,000. He went in under cover. He put his life on the line. That purchase was made. Six people were arrested. Six people were convicted.

Is it worth your tax dollars for a man to put his life on the line like that?

He went in and set up an undercover buy of $500,000 worth of counterfeit $10 bills. Arrests were made. Mr. Nadborne doesn't know whether convictions eventually resulted. He got $500,000 worth of counterfeit money off the street.

Those are some of the things that Mr. Nadborne was receiving money from the Federal Government for. But he said something else. He said he also got money, subsistence money to live on. He got that money because he couldn't get a job. He had to be travelling back and forth to court.

Subsistence doesn't mean that money was just for him. That's for him, his wife and his two kids. Sounds like a lot of money, but people have to live. And this is over a three year period of time.

Mr. Alch would have us believe that Mr. Nadborne is coming in here and making up a story, lying on the witness stand because he's receiving money from the Government.

(Cont'd on next page.)

MR. WEINTRAUB: (continuing) There's one fatal flaw in that. And that is that recently Mr. Nadborne had gotten a job. The federal government didn't get him a job. He went out and got a job on his own. He testified to that. He is now working. And he hasn't been receiving subsistence for over a month.

When he appeared and testified on that stand, He was no longer getting any money from the federal government other than the normal witness fees coming in and appearing in court. Every witness gets that.

Where is his motive to lie? Why would he want to lie if he is no longer getting any money?

Had he lied in the past?

Mr. Alch points out that Nadborne pointed the finger at a whole bunch of people that he was dealing with at that time and said, "I loaned money from these people also and they threatened me."

And you will remember in his opening, he made a special point of showing you how bad Mr. Nadborne is, because Mr. Nadborne had the temerity to accuse a bank vice president of threatening to break his leg. And you were supposed to believe --

you were supposed to think, I submit, what kind of a man is this, that would accuse a bank vice president of threatening him. Can you believe such a man?

But you recall what Mr. Nadborne testified. He said he went in to see the bank vice president, that he was wearing a body recorder, and he recorded a conversation in which that bank vice president said to him, "Your legs will be broken before you get out the door."

And at another point in the conversation, he said, "Joe Colurbo will be here in 15 minutes."

Do you think he was threatening him? Do you think Mr. Nadborne, knowing that that tape is in existence, would take the stand and say something other than what that tape can be brought in and show?

I submit he was telling the truth then, and he is telling the truth now.

I told you in my opening -- that I asked you at that time to watch for the corroboration in the case, watch for the details that are backed up by other testimony or other evidence.

I realize it's hard to do. I appreciate your attention. I notice that you have been attentive

throughout this very difficult -- considering that not only has the trial been going for almost two weeks, but you have been unable to go home afterwards. And I apologize for that also.

But it shouldn't have anything to do with this case.

The case is based on the evidence. Was Mr. Nadborne's testimony corroborated, or did he just leave it here by itself in front of you?

I submit it was corroborated.

Mr. Nadborne said his first contact with Mr. Jacobson that he can recall was about a loan. He made a $500 loan. How did he meet Mr. Jacobson?

He said Artie Wisner, a guy he dealt in stolen cars with, a friend of his, introduced Mr. Jacobson to him in a barbershop in Williamsburg where he met Mr. Jacobson.

Mr. Jacobson agreed to give him $500.

And where did they go to get the $500? Into a car that Mr. Jacobson had, a green 98 Oldsmobile. Pretty big car. 98 Oldsmobile.

Where else have we heard that same testimony in this case? Herman Weisberger, he was on the stand for only a short time. Remember him? Flashy

dresser. He was here. He said that he met Mr. Jacobson once at a barbershop in Williamsburg. And who took him there? Artie Wisner.

Is that just a coincidence?

I submit that is a strong point of corroboration of what Mr. Nadborne is telling you.

Where else have you seen the green Oldsmobile in this case?

Mrs. Lissauer. And MRs. Lissauer doesn't know Mr. Nadborne. Mr. Nadborne doesn't know Mrs. Lissauer. They never discussed this case between them .

Mrs. Lissauer tells us that when he calls her down to the shop -- when Mr. Jacobson did -- about the records she was keeping, she was on her way to the store. And there was Mr. Jacobson in a large green car.

Is that a coincidence or is that a point of corroboration.

What about Joel Snyder?

Joel Snyder tells us that he rode in Mr. Jacobson's car once. I asked him if it was an Oldsmobile. He honestly said, "I don't know makes of cars, but it was a big green car."

And where did he ride with Mr. Jacobson in his car? To a barbershop in Williamsburg.

Is that all a coincidence, or is that corroboration of exactly what Mr. Nadborne said?

Mrs. Wisner appeared on the stand. Not Mr. Wisner. Mrs. Wisner.

I submit, ladies and gentlemen, that Mrs. Wisner, who was very, very anxious to have you believe that there was a meeting or meetings between the Nadbornes and the Jacobsons prior to Mr. Nadborne son's barmitzvah.

Do you recall Mr. Nadborne said that he invited Mr. Jacobson to the barmitzvah because he was good for a hundred dollars. In fact, he gave him a hundred dollar gift.

That's another thing. If Mr. Nadborne wanted to make up a lie, if he wanted to hurt Mr. Jacobson, would he put in things like Mr. Jacobson gave him a hundred dollar gift? Would he put in things like the first $500 loan didn't have any threats connected with it at all? If he wanted to make up a lie, he could have come in and told you that at the very first meeting, where the $500 loan was made, he was threatened. But he didn't

say that because he's telling the truth. He told it as it was, that the first loan was very simple, unaccompanied by any threats, and he paid it back in a week, of 600 for 500.

Mrs. Wisner, she was so anxious to have you believe that there had been meetings between the Nadbornes and Jacobsons before Mr. Nadborne's son's barmitzvah, that she told you definitely without any question in her mind, that they went to the Silhouette Lounge together before the barmitzvah, a place she goes to at least once a week, every week, during 1968, every week during 1969. That means 100 -- well, about 100 weeks. Take a few more.

And she's going to remember this one occasion, as opposed to any other.

And I asked her -- I gave her an opportunity. I said, "Is there anything significant to that one day that will make it stand out in your mind, as opposed to the other 100 days?"

"No. But I am certain that it happened before Marvin's son's barmitzvah. I am certain."

Why was she so anxious to convince you?

Now, ladies and gentlemen, I have to admit

I laid a trap for her, in all honesty. I asked her, did she know whether the Jacobsons knew the Nadbornes before the Wisners' barmitzvah and I told her, '67. And she said, "Oh, yes, sure."

I said, "How do you know that?"

She said, "My husband told me, Artie Wisner."

The album that Mr. Alch put into evidence from the Wisner barmitzvah, shows the Jacobsons sitting at one table and the Nadbornes sitting at another table across the dance floor. According to Mrs. Wisner, If Mrs. Wisner knew that the Jacobsons were friends with the Nadbornes before her son's barmitzvah, why didn't she sit them at the same table? Why did she sit them apart?

I submit for the same reason that she's so anxious here to testify for somebody that she's been a friend with for 13 years.

The next piece of corroboration of Mr. Nadborne's testimony, is the way in which Mr. Nadborne was informed he was to contact Ralph Jacobson in the future.

He wasn't to call up Mr. Jacobson. He was to call up Cobo -- Mr. Cobo, at an answering service. He didn't know the name.

Mr. Nadborne didn't remember the name of the answering service. Didn't remember the number. But it's quite a long time ago.

But you don't have to guess about that. You can look at the exhibits in evidence.

Mr. Wolf took that witness stand -- Mr. Wolf, from the Best Answering Service got on that stand and he identified these two records, exhibits 4 and 5 in evidence.

And what do these records show? They show that beginning in January, 1969 -- by the way, does that date ring a bell? The loar that Mr. Nadborne made is in February of '69, the second loan. And the answering service is in January, '69. The record shows that the account was opened by Ralph Cobo, and underneath is written, R. Jacobson. Is that corroboration? Is that documentary proof that that was the name given to Mr. Nadborne?

Why didn't Mr. Jacobson use his real name on here? Why did he use the name, R. Cobo, if all these dealings are so innocent. You might say to yourselves, how do we know this is the same Mr. Jacobson? Maybe there is a different Mr. Jacobson.

I submit that there is proof beyond a

reasonable doubt -- beyond any doubt, that this is Mr. Ralph Jacobson. And that proof came from another friend of Mr. Jacobson, Mr. Gary Gold. He testified that he borrowed money on numerous occasions. He couldn't remember how many.

I asked him, "Is it more than 10?"

"I can't remember.

"With interest or without interest?

"I can't remember."

But he did slip. He let something in. He said that he was given a phone number by Mr. Jacobson, and a name to contact. And what was the name? Ted Fox.

On Government exhibit 5, you might look at it. The name Ralph Cobo is crossed out. Above the name, R. Jacobson. And what's the name written in? Ted Fox.

Why did Mr. Jacobson give a false name to Mr. Barry Gold to use?

The same records indicate Ted Fox, Ralph Cobo and R. Jacobson.

I submit, ladies and gentlemen, the evidence is clear, they are one and the same man, one and the same man with something to hide.

Something to hide brings us to another piece of the evidence, a piece that I'm sure was very confusing at the time it was introduced. I apologize for that.

You will recall it was a day when we sat and there was no evidence at all until the very end of the day and then there was a stipulation, and there were several very, very quick witnesses on the stand. It probably left you with your head spinning. It almost left me with my head spinning.

I'm going to try to explain that evidence now.

You will recall there was a stipulation -- there was a stipulation on that day, that in April of 1972, Mr. Jacobson had on his person an address book, and three of the numbers in the address book appeared in this way, just the way they appear on the upper left hand portion of this chart.

Is everyone able to see it?

Thank you.

(continued on next page.)

5aml
bs/nc

MR. WEINTRAUB: (Continuing) He had the name Barry and the number, WA 5 3066. Then he had Marvin Ford, 835 7540, and a bracket, and inside the bracket, Place, P-l-a-c-e, 516 379 8209. These were numbers Mr. Jacobson had in the address book on his person.

Something very strange happens here. You go to the subscribers in the New York Telephone Company records and the first number is subscribed to by Schoen Printing Company. You might recall that that afternoon a little old man came in from Schoen Printing, a very harsh voice, Murray Stein. Mr. Stein came in, he was on the stand for a couple of minutes, he said, "I don't know Mr. Jacobson. I had no business dealings with Mr Jacobson."

I asked him to look at him. He still didn't know Mr. Jacobson. Why would Mr. Jacobson have Mr. STein's number, the Schoen Printing Company number? Why would he have the name Barry next to it?

Next, he had the number of Marvin Ford, 835 7540, the phone company records, which were stipulated into evidence, show that it was subscribed to back then by Bernco Autoelectric Parts, and Mr. Cohen was a witness who appeared and said he was

the president of Bernco. They had been there for a long time, they had this phone number for a long time, they did no business with Mr. Jacobson, they didn't know Mr. Jacobson.

What is he doing with their number? Why is that number next to the name Marvin Lord?

Under Place, we have a 516 379 8209 number, a witness -- well, subscriber information of the phone company showed us that Mr. William Avy, was the subscriber and still is to that number. Mr. Avy came in. He says, "Oh, I've had that number a long time, but whenever I give it out I give it out as a Freeport exchange, not as 379, but as a Freeport 9.

"I never met Mr. Jacobson in my life, I don't know him."

What is he doing with Mr. Avy's number? Let's look at each number again. I submit that those numbers were in code. You take the WA 5 3066 number, bring it down here, leave the first three digits the same WA 5, take every other number except zero and subtract it from the number 10. 3 from 10 is 7, zero remains the same, six from 10 is 4, six from 10 is 4. We now have Barry, WA 5, 7044.

New York Telephone Company records now show

the subscriber at that time to be Sims Coffee Shop.

Remember Mr. Gold? He said, "I used to own Sims Coffee Shop in 1970." He said, "I borrowed money from Jacobson so many times, I can't remember." Is that the code for Mr. Barry Gold's number?

MR. ALCH: Objection.

THE COURT: He said he had borrowed money more than once. Move ahead.

MR. WEINTRAUB: Thank you, your Honor.

Is that the number he meant to have in his book? Why was it in code? Let's take a look at the Marvin Ford number. You bring that number intact down to here, and we use the same arithmatic. We subtract, leave the 835 alone, subtract 7 from 10 and get 3; 5 from 10, 5: 4 from 10, 6; leave the zero as it is and we now arrive at 835 3560. That number was listed on a card that Mr. Greenberg brought in from Parkway Ford.

Mr. Greenberg's card, it has Marvin Nadborne's name on it and it has two phone numbers, the second phone number is 835 3560. 835 3560.

Mr. Alch made some reference to this card and he told us that that was a number of Parkway Ford. I submit that that is just ridiculous. Mr. Greenberg,

who brought us this card, is an owner of Parkway Ford, he uses this card in his office.

Would he have his own phone number on here? Would he put down Marvin Nadborne's name and put down Parkway Ford's number?

Is he going to call himself? He'll get a busy signal. I submit, ladies and gentlemen, that this is a number that he could reach Marvin Nadborne at. That's the number that Ralph Jacobson could reach Marvin Nadborne at.

And that's again a number in code. Why is that? If there is nothing wrong with these transactions why is it in code?

The last number is Marvin -- you have the bracket -- Place, 516 379 8209. The same arithmatic results in the number 379 2801, and New York Telephone Company records show that tnat number is subscribed to by Wyn-Mar Jay Ford.

Mr. Nadborne, in fact, testified that at the time he was dealing with Mr. Jacobson he worked for several places, one of them was Wyn-Mar Jay Ford.

I submit that this list is the strongest corroboration that Mr. Nadborne was telling the truth when he said he borrowed money from Mr. Jacobson.

He said that Mr. Jacobson called him. Here Mr. Jacobson has two numbers to call him, one a work number, the other the 835 number. Why would those numbers be in code? I ask you that question, why would those numbers be in code?

WE then come to Mrs. Nadborne. Mrs. Nadborne, I submit,is a very quiet lady. I think the evidence here shows beyond any doubt that she is a homemaker, she is a person who sits home. He husband doesn't discuss finances, doesn't discuss his wheeling and dealing with her, and I say that that was very logical under the situation.

She might not have wanted to hear all of these things. Pur yourself in that position. She is a person who ran the house. As long as things were outside the house she was insulated. What is the one thing that did come to her attention? Ralph Jacobson. Why? Because Mr. Jacobson intruded nimself into their house.

Mrs. Nadborne said he called the house, Mr. Nadborne said he called the house. He visited the house. In fact, Mrs. Nadborne said, "I was in the kitchen, my husband and Mr. Jacobson were in the living room and I heard a threat. I heard Jacobson

threaten to break his legs."

Why does she know that and she doesn't know about the other transactions. The answer is simple: The other transactions didn't invade her home. This one did.

She was forced to know about this transaction. If it hadn't come into her home she would never know about it. What's her motive for coming in and lying?

Why is she here, just to help her husband out? Does that make sense? Would her husband be in any worse shape if she stayed home?

Mrs. Nadborne also could have fabricated a much more damaging story if her motive was to come in here and make up a story. She could have said, "I was there many times when Mr. Jacobson threatened my husband." She could have said, "Mr. Jacobson called up and everytime he called up he threatened me, threatened him or threatened our family," but she didn't say that.

She said, "He used to call up and say, 'Is Marvin home?' And I'd say no. And he'd say, 'Tell him I called.'"

Why did she say it that way? I submit she said

it that way because it's the truth. The times when Mr. Jacobson called or came over and there was no threat she said, "There was no threat," and the time that he came over and there was a threat, she said, "There was a threat." She heard it.

BEyond that, ladies and gentlemen, I submit that the similarities in the testimony between what Mr. and Mrs. Nadborne said and what Mrs. Lissauer has said showed a germ of truth. You must consider each count separately in determining guilt or innocence, but that doesn't mean that you have to close your eyes to the fact that Mrs. Lissauer and Mr. Nadborne and Joel Schneider and Mrs. Nadborne have come in here and told facts that match up; they corroborate each other.

How far fetched is it that you take two people off the street and say to the first one: We will call Mr. Jones. Mr. Jones, I want you to make up a story about a crime that's been committed on you by Mr. Jacobson. Then you call in a second individual, Mr. Smith, and you say: Mr. Smith, I want you to make up a story about a crime committed on you by Mr. Jacobson. And Mr. Jones doesn't know Mr. Smith. How incredible is it that they would

come up with the same story, the same type of crime? Is that beyond belief? That Mr. Jones would come in and say: I borrowed money at extortionate and high interest rates, very high interest rates. I had no trouble when I could pay back, but when I couldn't pay back I was threatened, I was pushed, I was slapped.

Mr. Smith would come in and he would say: I borrowed money, I borrowed money at high interest rates. I had no trouble while I could pay back.

Remember Mr. Nadborne said, "I paid back for 17 weeks, I had no trouble at all."

Mrs. Lissauer said, "I paid back eight or nine weeks. And then I said, 'How much do I owe you, I'm almost paid up,' and that's when the trouble started."

And then when they couldn't meet the payments they were threatened. Is that incredible beyond belief? And not even the general stories match, not just the general stories, even the details, the barber shop.

Is there any question about the barber shop? The barber testified that Ralph Jacobson used to stay there and receive calls. Mr. Weisberger testified

Arty Wissner took him to a barber shop. Mr. Nadborne said that Arty Wissner took him to meet Ralph in a barber shop. Not only are the general stories the same, the testimony in general, but even the minute details are the same; the barber shop, the green car, they match up from Lissauer's testimony, from Herman Weisberger's testimony and Mr. Giannini, the barber's testimony.

Would a liar think to put in those details? If Mr. Nadborne and Mrs. Lissauer wanted to get up on that stand and lie, they would make the lie out of whole cloth, that means they would make the lie as general as possible because it's very hard to attack when in general.

They would put in the details that showed they were telling the truth. They would put in the details which were corroborated every step of this trial.

(continued next page)

MR. WEINTRAUB: (continued) If you were going to make up a lie about somebody six years ago, five years ago, would you put in a detail like you met him in a barbershop or a detail like what kind of a car he had back then? Wouldn't you be certain that somebody would come in with the guy's registration back then -- strike that.

MR. ALCH: Your Honor, may I approach the bench, if your Honor please?

THE COURT: Yes.

(Side bar.)

THE COURT :Yes?

MR. ALCH: I am going to object and move for a mistrial on the ground that that constitutes a comment by the prosecutor on the failure of the defendant to testify.

THE COURT: The Bureau of Motor Vehicles could bring a registration in.

MR. ALCH: There was never any mention of any registration at all.

THE COURT: It had to be carried and exhibited right on the motor vehicle itself.

MR. ALCH: There was never any registration number testified -- there was never any evidence of

a registration number.

THE COURT: What he means is, if you are going to make up a story, wouldn't you find out what the man's registration was and testify that it was on the car, etcetera, etcetera. I think it is a poor argument, but I don't think it violates the Fifth Amendment.

But you do have to be careful, because it is so easy to get into a Fifth Amendment situation.

MR. WEINTRAUB: That is why as soon as I realized it even came close --

THE COURT: You should be more careful in that area.

(In open court:)

MR. WEINTRAUB: Let's move on to Mrs. Lissauer's testimony.

Again I would point out the details. Mrs. Lissauer was able to testify to dates, places; she has very specific recollection of when things occurred. I submit that it was not shaken, that it remained pretty much constant throughout the testimony, again consistent with her problems, with her note-making.

A person like this is just the kind of person

that could make notes. She had problems, she couldn't handle her financial affairs, she couldn't keep things straight, so in an attempt to keep things straight, what did she do? She wrote notes, she wrote notes all over the place.

Mr. Gewanter testified that she came into his office with shopping bags full of slips of paper at the time of the bankruptcy. This was just the kind of person she was, she kept notes.

We have in evidence a number of notes that she kept, records of payments to Ralph Jacobson. It took us a whole afternoon to go through them. I am not going to go through them all now, but typically, they showed payments to Ralph on given days, and she couldn't remember one day as opposed to another.

I submit that it is incredible that anybody could remember one day as opposed to another 5, 6, 6 and a half years ago.

Let us say, for instance, a person had a loan, a regular loan, and he was supposed to pay 50 dollars a month, but his finances being somewhat irregular, sometimes he paid a little more, sometimes he paid a little less, sometimes he paid

a little early, sometimes he paid a little late. You say to that person, do you remember making a payment on March 15, 1968 on that loan? How many people do you think would be able to remember March 15th, and if they made a payment and how much the payment was?

I submit, there are not very many people like that in the entire world. If you then took the guy's check out, and say the check was for $45, and you showed it to him and you said, "Here, would you look at your check, is that check in your handwriting?"

Well, he could look at it and say, "Certainly this is in my handwriting."

And you say to him, "Well, does that refresh your recollection, do you now remember March 15, 1974?"

If a person is being honest, I submit most people would not remember March 15, even after looking at the check, they would know they made a payment on that date because there is the check to show it, but they would not have an independent memory of it going back six years for a payment that was made in March of '68.

I submit that is exactly what Mrs. Lissauer

was doing here. If Mrs. Lissauer wanted to fake it, if she wanted to lie to you, she could have come in and said every time I showed her one of these pieces of paper, one of these notations of hers, she could have said, "Oh, yes, now I remember it. Sure I remember June 26th. Sure, there it is, yeah. Here, take the paper bag. On June 26th I paid him 50 dollars. I remember it distinctly."

She didn't do that. She was honest. She said, "No, I still don't remember it."

But, fortunately for us, the exhibit came in and they showed payments, they showed payment after payment after payment, as Mr. Alch correctly stated, "$1940 worth of payments."

Was she paying $1940 for some dresses that Mrs. Jacobson said were purchased? Those dresses were purchased and never delivered, why didn't she go to the police? Forget the police. Why didn't she go to the Small Claims Court and file a claim? Two to three hundred dollars out of your pocket, why didn't she file a claim or why didn't her husband file a claim in bankruptcy?

Why did Mrs. Lissauer's lawyer list Mr. Jacobson for $2,500 in bankruptcy? Would she list

him for $2,500 if all she owed him was two or three hundred dollars? Is she trying to make herself look bad?

You don't have to show more debts than assets to go into voluntary bankruptcy.

MR. ALCH: I respectfully object. That is exactly what you do have to show.

THE COURT: No, I am afraid that is not the case. The Bankruptcy Act provides in section 4A of the Bankruptcy Act, Title 11, United States Code, Section 22, A, any person, except a municipality, railroad, insurance or banking corporation, or a building and loan association, shall be entitled to the benefits of this Title as a voluntary bankrupt.

The acts of bankruptcy are acts which can be relied upon to put a person in bankruptcy in voluntarily, and it should be said that nobody invokes the bankruptcy law unless they are bankrupt, I think that much is true, and bankruptcy comprehends two ideas, that is, not having enough money to pay all of your debts, and the other one is, being unable to meet your obligations as they come due.

I believe the bankruptcy petition is in evidence here.

MR. ALCH: It is.

THE COURT: I know it was marked as an exhibit for identification, and I believe it has been marked into evidence.

MR. WEINTRAUB: That's correct, your Honor.

THE COURT: And it recites on its facing page, that is the petition in bankruptcy, if we have the right document, exhibit K, it recites all that needs to be recited to file a petition, and then there is the requirement that you append to it a truthful statement -- that is a requirement of law -- a truthful statement of your assets classified in different ways, and your liabilities, classified in different ways.

MR. WEINTRAUB: Thank you, your Honor.

Again, it is not necessary that you show you have greater -- that you owe more money out than property and money that you actually have in order to go into voluntary bankruptcy.

So Mrs. Lissauer had no motive to inflate the amount that she owed to Mr. Jacobson on that petition. There was no motive to do that.

Why do you think she would list somebody as a creditor for $2,500 if all she owed him was 2 oe 300 dollars. Wasn't she in enough financial difficulty at that point? Why would she list him in the bankruptcy at all?

I submit, she was frightened, she was confused, her business was going out from under her, she had no way of supporting her kids, -- in desperation she put Mr. Jacobson in there with all the rest of the people.

What was Mr. Jacobson's reaction? We know that he got notice of bankruptcy, and we know that the notice said that he was due $2,500.

He went down to the store, he went down to the store, and, according to Mrs. Lissauer, he yelled, "Whoever heard of putting a loanshark on a bankruptcy petition!"

According to Joel Snyder, her son who was there, and he says he remembers Mr. Jacobson came in, he was very upset, he grabbed her, he shook Mrs. Lissauer, and he said, "Whoever heard of putting a loanshark on a bankruptcy petition!" The very same words.

Mrs. Lissauer told us that Mr. Jacobson

removed merchandise from her store. Mr. Snyder told us, Joel Snyder told us that Mr. Jacobson removed merchandise from the store when he was there, he saw him.

Andrew Kaczmarek, the police officer, said that he came to the store with Mr. Jacobson there, moving merchandise. He told him to put it back. Did Mr. Jacobson resist at that point? I guess not. He's not going to make a scene over a couple of dresses in front of a police officer and really jeopardize himself. He put them back.

What did he say to the police officer?

Andrew Kaczmarek, the patrolman, said that Mr. Jacobson said, "She owes me 100, 150 dollars. I'm taking merchandise."

Is that what a law-abiding citizen does? Does he go down and take merchandise? What about the statement, "She owes me 100, 150 dollars"?

He had some paper in his hand. Was that the letter from the bankruptcy? Why didn't he say, "Here, she owes me $2,500." He didn't say that. Why didn't he say that he was notified that he was due $2,500 and not 100, 150? What was being hidden there?

You must be getting hungry -- I won't be too much longer.

What motive does Mr. Snyder have to come in and lie?

Mr. Snyder didn't want to come in and testify. He had to be brought here, marshals had to go out and serve a subpoena on him and require him to come in and testify.

You saw Mr. Snyder. No attempt was made to hide Mr. Snyder, to hide his life-style, hide the kind of guy he is.

He sat up there, and I submit to you, was one of the frankest witnesses in this case. He had no hesitation about admitting things about himself. He said, "Oh, yeah, when I was 15 years old I stole some money when I was selling Christmas trees." That's the worst offense that could be brought out about Mr. Snyder.

Mr. Snyder sat up there and frankly told you that he is a homosexual -- I won't shy away from the word. It takes all kinds of people, all kinds of philosophies. If you are going to disbelieve Mr. Snyder just because he is a homosexual, then I suggest that you are shirking your responsibilities

as jurors.

Not only does that fact, I submit, not detract from his believability, but it adds to it. He didn't sit up there and try to fake it, he told it just as it was -- in fact, he told it as it was all the way down the line, he didn't try to hide the fact that there is animosity between himself and his other, he brought that right out.

Would he lie for her? Would he lie for his mother when he lives apart from her? When he said his values are different and they don't get along, would he lie for her?

Of what benefit is it to his mother if Joel Snyder comes in here and lies? What benefit to her? How does it change her life?

Sure Mr. Snyder had to be brought in, his life style is such that he doesn't want to be involved, he doesn't want to be involved.

Everything about Joel Snyder says that. It says, "I'm my own man. I want to be independent, and I don't want to be dragged around the country by the Government or anybody else."

But he had no choice and he came in here and told the truth. He also could have made a

much more elaborate story, he could have said, "I was there when Mr. Jacobson pulled the gun on my mother."

He didn't say that. He didn't say that because it never happened when he was there, and he is not going to make up a story. He told it as it was.

The times he was there when he saw Mr. Jacobson, he said so, he said, "I was there when my mother made payments to Mr. Jacobson. I made payments to Mr. Jacobson. I rode in his car, a big green car."

They went down to a barbershop. Again, the details, the details are there, they are corroborated every step of the way.

Mr. Alch made reference to the fact that some of these notes of Mrs. Lissauer were not turned over until 1972-'73.

In case any of you were thinking that they were made up later on to back up her testimony, bear in mind that Mr. Booth, Mr. Booth, who was the attorney for the Referee in bankruptcy, testified that he was given a box of documents in March, 1969 and there payment slips in here, specifically 9

payment slips in here, came out of that box of documents that Mr. Booth was given back in March of 1969.

Was Mrs. [illegible]ssauer making up slips with Mr. Jacobson's name on them, phony slips back in 1969 for something that is going to happen in 1974?

She would have had to have been an incredible prophet to do that. These slips show that they were made contemporaneously with the activities. They don't cover every week . The files were a mess. In addition, some papers were burned by Mr. Jacobson in the store.

(continued on next page.)

MR. WEINTRAUB: (continuing) So, of course, there are not going to be notes of every week. But there are notes enough to show $1940 worth of payments.

Another interesting thing is that Mrs. Lissauer could not meet her bills. She went into bankruptcy.

Why was she making these regular payments to Mr. Jacobson? Why, when she couldn't pay money for dresses that were being delivered, when she couldn't return deposits to customers who were coming in, why was she still paying Mr. Jacobson every week? Was it because she liked Mr. Jacobson, or was it because she was threatened and she was in fear -- in fear?

In conclusion, ladies and gentlemen, I ask that you abide by your oath as jurors, and consider this case without bias or sympathy for either side. That you consider it on the evidence that has been submitted.

I realize that it's been a long time since we began. I appreciate your attention. I hope that you will continue to do a diligent job from this point on.

Thank you.

THE COURT: I believe, members of the jury, that your lunch has arrived.

So we will recess now, over your lunch hour, and you will then receive the instructions on the law when the marshal tells you that the luncheon recess is at an end.

Let me ask you please, and with great emphasis, do not discuss the case with one another or with anyone not on the jury until it is finally submitted to you early this afternoon for your deliberations.

So you must bear in mind now that as we approach the moment when the case is submitted to you, that at that point, assuming nothing happens between now and then, the alternate jurors will be excused, and they will have no part in your deliberations and must not. That's the reason I continue this injunction to you right down through to this moment.

We will recess now until the conclusion of your lunch.

(Whereupon, the jury retired from the courtroom.)

(Luncheon recess taken.)

AFTERNOON SESSION

1 pm 2:00 o'clock p.m.

(The jury enters the jury box.)

THE COURT: Members of the jury, you have heard the evidence in the case and the arguments of counsel and now must receive the instructions on the law that governs the case.

You, the jurors, are the sole judges of the facts. You must, however, follow the law as given to you in these instructions and apply it to the facts as you find them from the evidence before you. You are not free, nor am I, to substitute our private judgments as to what the law should be for what the law in fact is.

You have been sworn as jurors well and truly to try this case and to render a true verdict. You must therefore exclude from your deliberations all bias and prejudice. You must not permit yourselves to be governed by sympathy or by any other considerations not founded in the evidence and these instructions on the law.

The issues of fact to be tried are those made by the indictment and the defendant's plea of not guilty. Bear in mind that the indictment is the

formal method of accusing a person of crime; it is not itself evidence that a defendant committed the crime charged, nor is the fact that the indictment was found any evidence of guilt.

There are four counts in the indictment, two of which, Counts 1 and 2, deal with the alleged loans to Theresa Lissauer, and two of which, Counts 3 and 4, deal with the alleged loan to Irwin Marvin Nadborne. In the first two counts, dealing with the alleged loans to Mrs. Lissauer, it is alleged that defendant acted in concert with Gertrude Tannenbaum. The case of Mrs. Tannenbaum has been severed for separate trial. Both Counts 1 and 2 are drawn under Title 18 United States Code Section 894; the charge of Count 1 is that defendant conspired with Mrs. Tannenbaum to use extortionate means to attempt to collect and to collect extensions of credit from Mrs. Lissauer, and the charge of Count 2 is that the defendant participated in the actual use of extortionate means of collection against Mrs. Lissauer. Count 3 charges that the defendant made an extortionate extension of credit to Mr. Nadborne, and Count 4 charges that the defendant participated in the use of extortionate means to collect the alleged

loan from Mr. Nadborne.

Count 1 of the indictment is drawn under 18 U.S.C. Section 894, which so far as we are concerned with it provides: "Whoever knowingly...conspires... in the use of any extortionate means (1) to collect or attempt to collect any extension of credit... shall be fined...or imprisoned...or both."

Under the statute an extension of credit includes the making or renewal of any loan, or an agreement to defer repayment of any debt. The use of "extortionate means" refers to any means which involves either the actual use, or an express or implied threat to use, violence or other criminal means to cause harm to the person, reputation, or property of any person.

Now, Count 1 of the indictment reads:

Beginning on or about January 1968 and continuing up to and including the date of this indictment, which was May 23, 1973, in the Eastern District of New York, the defendant Gertrude Tannenbaum and the defendant Ralph Jacobson and other persons to the grand jury unknown knowingly conspired to use extortionate means within the meaning of Section 891, Subdivision 7 of Title 18, United States Code, to

attempt to collect and to collect extensions of credit from Theresa Lissauer.

Count 2 of the indictment is also found under the same section 894 and under Section 2 of Title 18 United States Code. The part of Section 894 with which we are concerned in Count 2 provides: "Whoever knowingly participates in any way...in the use of any extortionate means to collect or attempt to collect any extension of credit...shall be fined ...or imprisoned...or both."

Now, extension of credit and extortionate means have the same meaning as used in Count 2 which they have in Count 1.

Section 2 of the statute is also a basis of the indictment. That is a general section which provides that whoever aids, abets, counsels, commands, induces or procures the commission of an offense against the United States is punishable as a principal and that whoever willfully causes an act to be done which, if directly performed by him or another would be an offense against the United States, is punishable as a principal. You will observe here that Section 894 itself makes it a crime knowingly to participate in any way in the use

of any extortionate means to collect or attempt to collect any extension of credit, so that the statutory crime in its own language, by the use of the word "participates," embraces the idea of aiding and abetting another person in the performance of the act involved, that is, the using of extortionate means to collect or attempt to collect any extension of credit. Count 1 of the indictment reads in the following language.

From on or about the 29th day of May, 1968, up to and including the date of this indictment, in the Eastern District of New York, the defendant Gertrude Tannenbaum and the defendant Ralph Jacobson knowingly did participate in the use of extortionate means within the meaning of Section 891, Subdivision 7 of Title 18, United States Code, to attempt to collect and to collect from Theresa Lissauer, a debtor, an extension of credit, to wit: the defendant Gertrude Tannenbaum and the defendant Ralph Jacobson expressly and implicitly did threaten Theresa Lissauer with the use of violence and other criminal means which would cause harm to the person, reputation and property of Theresa Lissauer.

Turning to the first two counts, dealing with

the alleged loans to Mrs. Lissauer, the essential elements of Count 1, all of which the Government must establish beyond a reasonable doubt or else you must acquit the defendant on Count 1, are the following:

First, that a loan was made to Theresa Lissauer or Madame Lissauer, Inc.

Second, that the defendant conspired with Gertrude Tannenbaum actually to use, or conspired to threaten, expressly or impliedly, to use violence to cause physical harm to the person of Theresa Lissauer or damage to the store; and

Third, that the defendant so conspired to use such violence or threat of violence as a means of collecting or attempting to collect a loan from Theresa Lissauer.

If the Government has established all three of the essential elements of Count 1 beyond a reasonable doubt, you will convict the defendant on Count 1. If, however, the Government has failed to establish one or more or all of the essential elements of Count 1 beyond a reasonable doubt, then you must acquit the defendant on Count 1.

The first thing that you must decide, then,

is whether you are satisfied beyond a reasonable doubt that defendant Jacobson made a loan to Theresa Lissauer or to Madame Lissauer, Inc. The Government must show that there was a loan, an indebtedness. Bear in mind that the charge is not concerned with the original lending of the money nor with the rate of interest charged on it. The case, rather, is concerned only with the means later used to collect or attempt to collect the loan.

If you conclude beyond a reasonable doubt that a loan was made to Theresa Lissauer or to Madame Lissauer, Inc., then you turn to the second essential element of the crime charged. Did the defendant conspire with Gertrude Tannenbaum to use or in threatening to use violence to cause personal harm to Theresa Lissauer or to cause damage to the store property?

To conspire is deliberately and knowingly to agree to unite one's efforts with the efforts of one or more other persons to effect a common wrongful purpose or to effect some aim by the use of wrongful means.

The gist of conspiracy is in the agreement to concert action among two or more persons to accomplish

something wrongful or to accomplish something not in itself wrongful by wrongful means. It is, quite simply, agreeing on teamwork in wrongdoing.

The Government must prove beyond a reasonable doubt here that defendant did conspire with Gertrude Tannenbaum to use violence or to threaten to use violence to do personal harm to Theresa Lissauer or to damage the store property. The Government need not show that the alleged conspirators met together at one time and place and then and there reached an expressed and explicit agreement on what they would do, what part each conspirator would play, and how they would do it. But the evidence must establish facts from which you are able to and do infer beyond a reasonable doubt that defendant and Gertrude Tannenbaum did in some way contrive to unite in bringing about the use or threatened use of violence to do personal harm to Theresa Lissauer or to damage the store property.

The Government need not prove that defendant conspired throughout the whole period embraced by the evidence and that the conspiracy functioned throughout that entire period. But you must be satisfied that the defendant did conspire with

Mrs. Tannenbaum essentially as described in the indictment and continued in the conspiracy for a substantial period of time.

If you are satisfied beyond a reasonable doubt from the evidence that there was a conspiracy to use or threaten the use of violence, then you must be further satisfied from the evidence that the defendant joined in the conspiracy knowingly and intending to advance or further it by performing a part in carrying it out. The Government must establish beyond a reasonable doubt that the defendant knowingly joined the conspiracy through evidence of the defendant's own acts and conduct presented herein court by a witness or witnesses who observed his conduct and heard his words. It is not enough for the Government to present testimony about the acts and words of Gertrude Tannenbaum and testimony that she told the witness things which, if true of the defendant, would make him a co-conspirator. Once, however, you are satisfied by the evidence that defendant was a conspirator with Gertrude Tannenbaum, then he is responsible for whatever she did or said during the conspiracy to further the attainment of the objective of the conspiracy

whether or not he was present when she did it or said it, provided that you are satisfied that he joined the conpsiracy knowing its essential terms and that it was wrongful.

If you conclude that the Government has failed to show beyond a reasonable doubt that the defendant conspired to use or threaten the use of extortionate means, then you must acquit that defendant on Count 1.

If, however, you are satisfied beyond a reasonable doubt that a loan was made to Theresa Lissauer or Madame Lissauer, Inc., and that the defendant conspired with Gertrude Tannenbaum to use or threaten to use violence to do personal harm to Theresa Lissauer or to damage the store property, then you turn to the third essential element: Was the conspiracy to use violence or the threat of violence a conspiracy to use it as a means of collecting or attempting to collect the loan made to Theresa Lissauer or to Madame Lissauer, Inc?

It is not enough for you to be satisfied that there was a conspiracy to use violence or to threaten to use it against Theresa Lissauer, and that the defendant conspired in that use. You must

be further satisfied that the conspiracy to use the violence was a conspiracy to use or threaten to use violence as a means of collecting or attempting to collect the loan to Theresa Lissauer or Madame Lissauer, Inc.

Let me then repeat the essential elements of Count 1.

The essential elements of Count 1, all of which the Government must establish beyond a reasonable doubt or else you must acquit the defendant on Count 1, are the following:

First, that a loan was made to Theresa Lissauer or Madame Lissauer, Inc.

Second, that the defendant conspired with Gertrude Tannenbaum actually to use, or conspired to threaten, expressly or impliedly, to use violence to cause physical harm to the person of Theresa Lissauer or damage to the store and

Third, that the defendant so conspired to use such violence or threat of violence as a means of collecting or attempting to collect a loan from Theresa Lissauer.

Turning now to Count 2, which I read to you just before:

The essential elements of Count 2 of the indictment, all of which the Government must establish beyond a reasonable doubt or else you must acquit the defendant on Count 2, are the following:

First, that defendant lend money to Theresa Lissauer or Madame Lissauer, Inc.;

Second, that the defendant participated in the actual use or the express or implied threat to use violence to cause physical harm to the person of Theresa Lissauer or to cause damage to the store property; and

Third, that the defendant intentionally participated in the use of such violence or threat of violence as a means of collecting or attempting to collect the loan.

If the Government has established all three of the essential elements of Count 2 beyond a reasonable doubt, you will convict the defendant on Count 2. If, however, the Government has failed to establish any one or more or all of the essential elements of Count 2 beyond a reasonable doubt, then you must acquit the defendant on Count 2.

You will notice in Count 2 that defendant is charged with participating in the offense. The

Government does not have to show that defendant participated in each of the acts making up the totality of the offense, or performed the acts making up the offense, if offense there was, unaided. The Government must, however, show beyond a reasonable doubt that the defendant actively participated in the performance of the acts making up the offense knowing the nature and purpose of the acts and their unlawful aim, and that he joined in committing them with a will to make them succeed in the attainment of their objective.

Count 3 of the indictment, the first of the two counts dealing with Mr. Nadborne, is framed under Section 892 of Title 18, United States Code. That section provides, so far as we are concerned with it, that "Whoever makes any extortionate extension of credit...shall be fined...or imprisoned ...or both."

Let me repeat that: "Whoever makes any extortionate extension of credit...shall be fined... or imprisoned...or both."

The statute defines what constitutes making an extortionate extension of credit in these words in Section 891, Subdivision 6:

Charge

"An extortionate extension of credit is any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person."

Count 3 is in this language:

On or about February 1969, in the Eastern District of New York, the defendant Ralph Jacobson knowingly did make extortionate extensions of credit to Irwin M. Nadborne in the amount of $3,500, the defendant Ralph Jacobson and Irwin M. Nadborne understanding at the time said extensions of credit was made that delay in making and failure to make repayment of the same could result in the use of violence and other criminal means to cause harm to the person, reputation and property of Irwin M. Nadborne and others."

The essential elements of Count 3 of the indictment, both of which the Government must establish beyond a reasonable doubt or else you must acquit the defendant on Count 3, are the following:

First, that defendant lent money to Marvin

Charge

Nadborne;

Second, that at the time defendant lent the money to Nadborne defendant made clear to Nadborne and Nadborne understood that delay or failure in making payments on the loan could result in defendant's using violence or other criminal means to harm Nadborne in his person or property.

If the Government has established both of these essential elements of Count 3 beyond a reasonable doubt, you will convict the defendant on Count 3. If, however, the Government has failed to establish either or both essential elements of Count 3 beyond a reasonable doubt, then you must acquit the defendant on Count 3.

Count 4 of the indictment, like Count 2, is drawn under Section 894 of Title 18, United States Code, and therefore its language is very similar to that of Count 2 except that it refers to a different transaction and a different borrower. Count 4 refers to the alleged loan to Nadborne. As I said in connection with Count 2, Section 894 so far as we are concerned with it provides: "Whoever knowingly participates in any way...in the use of any extortionate means to collect or attempt to collect

any extension of credit...shall be fined...or imprisoned...or both."

Count 4, like Count 2, refers to the use of extortionate means as defined in Section 891, Subdivision 7, that is, any means which involves the use, or an express or implicit threat of the use, of violence or other criminal means to cause harm to the person, reputation or property of any person. Here, as in Count 2, the statute and the charge of Count 4 embrace the idea of aiding or abetting another person in the performance of the act involved, that is, the using of extortionate means to collect or attempt to collect any extension of credit.

Count 4 of the indictment reads in the following language:

From February 1969 up to and including the date of this indictment in the Eastern District of New York the defendant Ralph Jacobson knowingly did participate in the use of extortionate means within the meaning of Section 891, Subdivision 7, of Title 18 to attempt to collect and to collect from Irwin M. Nadborne, a debtor, an extension of credit, to wit: the defendant Ralph Jacobson expressly and implicitly did threaten Irwin M. Nadborne with

the use of violence and other criminal means which could cause harm to the person, reputation and property of Irwin M. Natborne.

The essential elements of Count 4 of the indictment, all of which the government must establish beyond a reasonable doubt or else you must acquit the defendant on Count 4, are the following:

First, that defendant lent money to Marvin Nadborne;

Second, that the defendant actually used or expressly or impliedly threatened to use violence to cause physical harm to the person of Marvin Nadborne or his property; and

Third, that the defendant intentionally used such violence or threat of violence as a means of collecting or attempting to collect the loan to Nadborne.

If the Government has established all three of the essential elements of Count 4 beyond a reasonable doubt, you will convict the defendant on Count 4. If, however, the Government has failed to establish any one or more or all of the essential elements of Count 4 beyond a reasonable doubt, then you must acquit the defendant on Count 4.

You must consider each count separately on the basis of the evidence that applies to it. You may find, of course, that certain items of evidence are relevant to two counts or to more, but you must not assume in any way that guilt or innocence on one count automatically establishes guilt or innocence on another count. We have here evidence concerning two different situations: that of Mrs. Lissauer and that of Mr. Nadborne. While, as I have said,you consider each count separately on the evidence relevant to it, that does not mean that if you perceive a pattern of similarity between defendant's activities as you find them from the evidence to have been in the Lissauer matter, and his activities as you find them from the evidence to have been in the later Nadborne matter, that you may not take that similarity of activity into account as relevant to your evaluation of the worth of the evidence bearing directly on the Nadborne matter and in deciding whether or not the Government has proved one or the other or both Nadborne counts beyond a reasonable doubt.

Proof beyond a reasonable doubt is not proof to an absolute certainty. Few things in life can be

so proved. Proof beyond a reasonable doubt is such proof as you would be willing to rely and act upon in the most important of your own affairs. If, after carefully weighing all the evidence,you have an abiding conviction of the truth of the charge such that you feel conscientiously bound to act upon it, then you would be free from reasonable doubt. If, however, after weighing all the evidence, you have such a doubt as would cause prudent persons to hesitate before acting in matters of importance to themselves, such a doubt would be a reasonable doubt.

That does not mean that each bit of the Government's evidence must be found by you to be true beyond a reasonable doubt. It means rather that in sum total the Government's evidence must satisfy you beyond a reasonable doubt as to each element of the crime charged, or you must acquit.

A reasonable doubt may arise not only from the evidence produced, but also from the lack of evidence. Since the burden of proof is always on the Government, a defendant has the right to rely on the failure of the Government to prove any essential element of the charge. A defendant may rely too on evidence brought out on his cross-

examination of witnesses called by the Government. The law does not impose on a defendant the burden or duty of producing any evidence.

Under our law a defendant has a constitutional right to remain silent. No inference unfavorable to the defendant can be drawn from that fact. Your deliberations accordingly must exclude consideration of or reference to the matter and must concern itself solely with the evidence before you.

A defendant is presumed to be innocent and that presumption accompanies him throughout the trial. It continues unless you are satisfied on all the evidence that the Government has proved defendant's guilt beyond a reasonable doubt.

I will not summarize the evidence. The issues are clear cut. You have heard thirty-one witnesses. To name them in order of their testifying: Marvin Nadborne, Annette Nadborne, Bernard Cohen, Murray Stein, William A. Avery, Gus Wolff, Barry Gold, Theresa Lissauer, Andrew Kaczmarek, Joel Snyder, Edgar H. Booth, Herbert Greenberg, Martin Bilder, Harry Giannini, Thomas R. French, Herman Weisberger, Adele Rogoff, whose testimony

was read into evidence, Harvey Spar, Gertrude Spar, Alphonse Esposito, Edward Anderson, Stanley M. Gewanter, Hattie Richmond, Nancy Shamis, Benjamin Wigdor, Shirley Wissner, Estelle Herman, Arlene Kohn, Rose Kohn,Joan Jacobson, and Judith Rosenblum.

Thirty-three exhibits have been received. I have said that you must decide the case on the evidence. The evidence is the testimony of these witnesses, the exhibits received in evidence, and the facts that have been stipulated by the parties.

Statements and arguments of counsel and answers stricken from the record are not evidence.

The evidence includes, of course, what is brought out on cross-examination as well as what is testified under direct examination.

Your verdict must be based on the evidence. But in your consideration of the evidence you are not limited to the bare words of the witnesses and the bald facts that you find have been proved. The evidence includes the inferences reasonably to be drawn from the testimony which you hear and the facts which you find have been proved.

There are two types of evidence from which you may lawfully find that a fact has been proved. One

is direct evidence, such as the testimony of an eyewitness to his observations of the facts to be proved. The other is circumstantial evidence -- the proof of facts and circumstances which rationally imply the existence or nonexistence of some other fact because such other fact usually and reasonably follows according to the common experience of mankind. Thus, if you see people coming into a building shaking out dripping umbrellas, and others about to go out of doors turning back toward their offices, you infer from these circumstances that it is raining outside. Or, while you can see from your window that the sky is full of clouds and the streets are wet, you see also that passing cars are not using their windshield wipers and passersby are carrying their umbrellas folded under their arms, you infer from those circumstances that it is not raining.

As a general rule, the law makes no distinction between direct and circumstantial evidence. If the evidence, as here, is in part indirect and circumstantial, then you apply to it, along with all the other evidence, the same standard of proof: It must, taken with the other evidence, satisfy you of the defendant's guilt beyond a reasonable doubt or

MR. ALCH: Your Honor, 534 does reflect a descrip-

Charge

you must acquit.

You are the sole judges of the credibility of the witnesses.

The motives and state of mind of each witness as they appear to you and the circumstances and inducements under which the witness testified are to be taken into account. Consider any relation each witness may bear to either side of the case and the manner in which the verdict might affect him.

You may consider the appearance and manner of each witness on the witness stand, the witness's apparent candor or lack of it, and the character of the testimony given, whether the testimony contains inconsistencies or discrepancies, whether it is intrinsically credible or seems to you in whole or part improbable, and whether it conflicts with other testimony or is consistent with other testimony in the case.

In weighing the effect of conflict or discrepancy, consider whether it pertains to a matter of importance or to unimportant details, and whether it seems to you to result from innocent error or from falsehood. If you find a witness has been mistaken or untruthful in all or in part of the testimony

given, then you may give the testimony of that witness such credit, if any, as you think it deserves in the light of the nature and extent of the defects that you find in it.

Evidence that at an earlier time a witness made a statement inconsistent with or contadictory of that witness's testimony here in your presence justifies you in rejecting the testimony given before you on that point but does not require you to reject the testimony. You must decide in the light of the inconsistency and all the other factors bearing on the credibility of the testimony whether you do or do not accept it as true. You do not, however, take the earlier statement as establishing the true facts; rather, you treat it as at most nullifying the testimony given in court here.

If, however, a witness adopts as true a statement he made out of court at an earlier time, for example, a statement made to an FBI agent, then you may treat that out-of-court statement as the witness's evidence.

In considering the credibility of a witness you may take into account the fact that he or she has been previously convicted of a crime or crimes.

You may also take into account evidence that a witness has admitted the commission of other acts that were in violation of the law.

If you conclude that a witness has knowingly testified falsely concerning any material matter, you have a right to distrust that witness's testimony in other particulars. You may reject all the witness's testimony or give it or parts of it the credence you think it deserves.

I have sought not to comment on the evidence or give any impression as to my own view, if I have one, of the relative weight of the evidence. If I have done so, however, you may disregard it entirely for you are the sole judges of the facts.

From time to time in the course of the trial objections have been made and rulings on evidence given. Draw no inferences from the comparative frequency of objections of one or the other side or from the comparative record in having objections sustained. Where an objection to a question has been sustained, disregard the question and draw no inferences from its wording about the answer that might have been given. Where an objection is overruled, evidence then received has no special weight just because it was unsuccessfully objected to.

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THE COURT: (continuing) Now, your verdict must be unanimous. It is your duty as jurors to consult with one another, and to deliberate with a view to reach an agreement if you can do so without doing violence to individual judgment. Each of you must decide the case for yourself. But do so only after an impartial consideration of the evidence with your fellow jurors.

In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. Your task is one of conscience. And pride of opinion has no place in matters of conscience. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

The form of your verdict, which must be given separately on each Count is simple. Your verdict must be either Guilty or Not Guilty. It must be given separately for each Count. And it must be a unanimous verdict on each Count. Your verdict need not be the same on all Counts. Your verdict on each Count will be delivered orally here in open court by your Foreman in response to questions which the Deputy Clerk of the Court will address to her.

You are not partisans, you are Judges -- Judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

When you have reached a verdict and are ready to report, simply advise the Marshal that you have reached a verdict, without disclosing orally or in writing what your verdict is. Your verdict must not be disclosed to anyone before you deliver it orally in the courtroom in response to questions of the Clerk of the Court.

If you wish to communicate with the Court, do so in writing, using your Foremen, Juror No. 1, as your intermediary and representative. Notify the Marshal when you have any such communications.

Now, the Marshal will be seated out here in the courtroom, so that if you have a message for him, you have to open the soundproof door, knock on the inner side of the courtroom door, and the Marshal will open the door and take the message from you.

There will now be a short recess, during which counsel will review the Charge with me to make certain that nothing has been omitted or misspoken. Then you will retire to the Jury Room to deliberate your verdict.

Now, when you do return, Mr. Figueroa and Mr.

Scheiber, bring your hats and coats with you, because when the remaining part of the jury goes back finally to deliberate, you will not.

All right. Please do not embark on your discussions until we have excused the Alternate Jurors. There will be a short recess now.

(Whereupon, the jury retired from the courtroom.)

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(continued on next page.)

THE COURT: Yes, sir.

MR. ALCH: I have nothing to add, your Honor.

MR. WEINTRAUB: Nor I, your Honor.

THE COURT: Then we will Swear the Marshal.

There is a Form of Verdict. Does it look all right to you?

MR. ALCH: Yes.

MR. WEINTRAUB: Satisfactory, your Honor.

THE COURT: All right.

There are a few other things that the Marshal took up with me, and we can talk about it as soon as the jury leaves.

(Jury present.)

THE COURT: There will be no further instructions, Members of the Jury.

As you remember, we put you in the Marshal's custody at the very beginning, but now, if you will step up, we will put you in a somewhat different kind of custody this time.

(Whereupon, two Marshals were duly Sworn by the Deputy Clerk of the Court.)

THE COURT: Now, there will be no further instructions, and twelve of you who constitute our jury will now retire to commence your deliberations.

Here are copies of the Indictment and a Verdict

Report Form for your use.

Will you remain with us, Mr. Scheiber and Mr. Figueroa?

(Whereupon, at 3:05 P.M. the jury repaired to commence their deliberations.)

THE COURT: Mr. Scheiber and Mr. Figueroa, I want to thank you for your patient attendance throughout the trial, and congratulate you on having so excellently preserved the health of the other twelve jurors.

I understand that the Marshal will see to it that you get back to the hotel all right so that you can get your bags and stuff together, and proceed from there.

If you want to find out how it all ended, why, I am sure you can telephone the court here, and we will be able to tell you when the case has been determined.

Thank you very much for your attendance, and if either one of you needs a certificate of attendance furnished tc your employer, could you let Mr. Walsh know so that he can see that it is prepared.

There is nothing much we can do about it today, because I think the Clerk's office is officially closed, so that will have to be done tomorrow.

(Alternates excused.)

THE COURT: What the Marshal has broadly outlined

is that at the close of a decent day here, they were to return to the motel, and he would limit all persons talking to outsiders in favor of just getting messages from them to communicate to the outside, and to ban newspapers, on the ground that it would be appalling cruelty to look at movies and election returns on TV, but nothing else.

I don't think that there is any possibility of any solution creeping in from that source, but with newspapers, you never can tell, because there is no way of reading them fast enough to make them useful for the jury without running the risk that something will be missed.

Does that seem a sensible program?

MR. ALCH: Yes, sir.

MR. WEINTRAUB: Agreed, your Honor.

THE COURT: Would you please see that all the Exhibits are lined up on the table.

MR. WEINTRAUB: We do have one Exhibit that should be photostated, that is, number seven, and I can either do that right now, or have the Clerk do it.

THE COURT: We were to mask everything but the 24th of February.

(Whereupon, a Marshal was duly Sworn by the Deputy Clerk of Court.)

THE COURT: If there are any phone messages that

they want to send out, I usually clear them unless they look suspicious, in which event -- Well, I never had one -- in which event I would call on counsel, otherwise I simply authorize the Marshal to make the phone call.

Nobody talks to the jury.

Is that all right with you, without calling you in each time?

MR. ALCH: Yes, sir.

MR. WEINTRAUB: Yes.

THE COURT: And Mr. Walsh usually Swears relief Marshals as required.

We seem to have all male Marshals.

A MARSHAL: During the nighttime hours a female Deputy will come on.

THE COURT: So she has to be Sworn, or any other additional or relief Marshal.

I take it we can just have Mr. Walsh do that without getting us all in here?

MR. ALCH: I agree, your Honor.

MR. WEINTRAUB: Yes.

(Recess.)

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(continued on next page.)

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(The following took place in the absence of the jury.)

THE COURT: The message from the jury, which reads:

"Could we have a rough sketch of the store, indicating where her desk, three parts of the store, location of the front door, and the fitting rooms are. We would also like to see her Day Sheets."

I imagine you know what the antecedent of her is?

MR. WEINTRAUB: Considering the evidence, it can only refer to Mrs. Lissauer, Judge.

THE COURT: Was no sketch of the store -- I wonder, was there any place in the evidence where there was a reliable description of it?

MR. ALCH: My recollection, your Honor, is that the closest we ever came to it in this trial was when I was cross-examining Mrs. Lissauer with regard to the fire. And I am trying to find it now, asking her something about, Was this in your desk in the middle of the store?

That's about the only thing I can recall.

THE COURT: Do we know what they mean by, "and also like to see her Day Sheets."

I would take it those are the -- those things for the most part.

MR. ALCH: Your Honor, what I am trying to do is

to look at the -- the way the sheet describes the documents. Some were referred to as Day Sheets, and some were referred to as other things.

THE COURT: Well, I imagine -- Well, some of them, she first testified, were the ones she put on the spindle, and therefore would show that they had been impaled. I think we have only one of those.

THE CLERK: I think 534.

THE COURT: 534?

MR. ALCH: I am on 552. I believe the first thing that was introduced was the calendar.

MR. WEINTRAUB: Yes. That's correct.

MR. ALCH: Which was Exhibit 7. And then when Exhibit 8 was mentioned, she referred to it as a -- a reminder sheet, things that had to be done and accomplished, on 552.

THE COURT: 8 isn't here. I have 9, 10, 11, 16.

THE CLERK: 8 never went in evidence.

MR. ALCH: 9 is the -- 9 is a Day Sheet. 10 is a Day Sheet, she testified.

THE COURT: Yes. Go ahead.

MR. ALCH: 11 is a Day Sheet, according to her testimony. She refers to 12 as a Day Sheet.

THE COURT: Wait a minute. Now, let me see if I am following your numbers.

Are you -- I've got 9.

MR. ALCH: 12 is a Day Sheet.

THE COURT: 9, 10, 11 and 12. Is that right?

THE CLERK: Yes.

THE COURT: 13, 14 and 15.

MR. ALCH: Let's see now. 13, she refers to as a Day Sheet. 14 she refers to as a Day Sheet. 15, she refers to as a Day Sheet.

THE COURT: She seems to have been remarkably consistent. These are all ones with entries on the left and right.

THE CLERK: 15 is the last one.

MR. ALCH: 16, she calls a Day Sheet. 17. 17, she --

MR. WEINTRAUB: No, that is not a Day Sheet.

MR. ALCH: Not a Day Sheet.

What are we up to, 17?

MR. WEINTRAUB: 18 will be the next one.

MR. ALCH: 18 is not a Day Sheet.

MR. WEINTRAUB: That's correct.

MR. ALCH: 19 is a Day Sheet. 20 is not a Day Sheet.

THE COURT: Is not.

MR. ALCH: Is not.

MR. WEINTRAUB: That's correct, your Honor.

THE COURT: What did she call that?

MR. ALCH: A document stating money that had to be paid that day.

THE COURT: To be --

MR. WEINTRAUB: To be paid.

MR. ALCH: Yes. 21 is a Day Sheet. 22 is a Day Sheet. 23 is a Day Sheet.

MR. WEINTRAUB: Yes.

MR. ALCH: 24 is not a Day Sheet.

THE COURT: 24 is not.

MR. WEINTRAUB: 24, 25 and 26, I believe, are all parts of a notebook.

THE COURT: All a pocket notebook.

MR. ALCH: Yes, sir.

THE COURT: 28 is the metal box.

MR. WEINTRAUB: And 29 is the card from Mr. Greenberg with Marvin Nadborne on it.

That would cover all of the Exhibits.

THE COURT: Okay. These are they. Do you have a paperclip?

THE CLERK: Yes, sir.

THE COURT: Now, page 534.

Here is 20, to be restored to the collection over there.

Do you want to give these to the Marshal?

MR. ALCH: Your Honor, 534 does reflect a description by Lissauer on direct of the store.

THE COURT: Do you have something better than that? You thought on cross --

MR. ALCH: I just would like -- I would request of your Honor that if your Honor deems that 534 should go in, that also --

THE COURT: I think we are all the same on this. We are looking for the nearest thing to what she said, because I'm --

MR. ALCH: 766 makes particular --

THE COURT: Which one?

MR. ALCH: Page 766 makes particular reference to the desk.

MR. WEINTRAUB: I don't think that really enlightens us on the location.

THE COURT: Where is it?

MR. ALCH: On 766. During cross-examination, I asked her -- We were talking about the fire incident. And I said -- Question on line 14:

"And he set fire to it in an ashtray on your desk?

"Answer: Yes, in a large ashtray. Yes, sir.

"And please tell the jury, then, the name of one person who could corroborate that store, who saw this

6 fire of the voluminous records in an ashtray in the middle of your store."

And she said, "My son."

Well, they did ask where the desk was. And again, on 767, beginning on line 8, another question put to Mrs. Lissauer refers to the fire in the ashtray on the desk in the middle of the store.

THE COURT: Well, I don't think that's specific enough. You see, she didn't say that. That's what you imposed on her. But her attention would have been directed to the fact that she said a bonfire in the store, and she said, yes, there was a bonfire in the store. And nobody paid a blessed bit of attention to it.

Is there anything more descriptive?

I remember at the last trial we had a rather detailed set of questions about that which I must say produced a description of the store that I found impossibly confusing, or a layout of the store.

MR. WEINTRAUB: I don't recall any more detailed testimony on that point in this trial, your Honor.

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THE COURT: The next thing the jury wants is, "We would like to see the Police Report on the incident between Trudy and Theresa."

They are on a first-name basis with those folks. "We also would like to have a definition of the extortionate means used within the definition of Section 891-7."

We have to read that to them.

I would think if we read -- I don't know, I think that we have to say there is no sketch in evidence, and none available to counsel as far as I know, because I gather by this time it is long out of her ownership, is that right, Mr. Alch?

MR. ALCH: Yes, your Honor.

THE COURT: So we really are at the mercy of human recollection for the layout of the store. Should we read this to them?

MR. ALCH: Your Honor, I would object, because it is so intertwined --

THE COURT: I think the easiest thing to do is to tell them that there is no sketch, that there really isn't any systematic description in the evidence that we can locate, and they will have to be guided by their recollections.

MR. ALCH: I would agree, your Honor.

MR. WEINTRAUB: Very good, your Honor.

(Whereupon, at 4:35 P.M., the jury entered the courtroom.)

THE COURT: Members of the Jury, there was no sketch of the layout of the store available to counsel, or any of us, and we have been going through the transcript together to see if there is anyplace where there was a systematic description of the layout of the store that we could properly remind you.

We have concluded that there really isn't, that there isn't anyplace in the record that someone just told us all about that, so you have to be guided by your own recollections, as best you can, of what was said at various times as to things that occurred in different parts of the store.

We have given you the Exhibits which Mrs. Lissauer identified in her testimony as Day Sheets, and the Marshal has just given you, also, the Police Report on the Tannenbaum-Lissauer incident, and this is the definition of extortionate means in Section 891, Subdivision 7, and if you will have this in mind, would you go back and look again at Counts Two and Four, you will see that I think almost each word in 891-7 is repeated in the Count.

Subdivision 7 reads:

"An extortionate means is any means which involves the use or an express or implicit threat of use of violence or other criminal means to cause harm to the person, reputation or property of any person."

Does that give you what you need?

You will resume your deliberations.

(Whereupon, at 4:40, the jury repaired and contionued their deliberations.)

(Recess.)

(4:45 P.M., the jury entered the courtroom.)

THE COURT: It is our turn to ask the questions.

We are trying to figure out a schedule. Since you are sequestered and all locked up together, the inquiry that we want to make of you is whether you would prefer to continue your deliberations over the dinner hour, we can arrange to have dinner downtown here, and resume after dinner, continuing your deliberations this evening, or would prefer to stop your deliberations at 5:30, somewhere around that, and return and resume them tomorrow, assuming, of course, that you do not conclude your deliberations earlier?

We are not hurrying you, we want to make sure, because there is no time pressure on you at all, and we are all very much opposed to squeezing you, or making it uncomfortable in an effort to hurry a verdict out of you,

but we did want to inquire what your preference would be.

Would you want to go in and talk about it, and let us know, because we will suit your convenience either way, and we are not being altogether unselfish about this, because we know there is no television anyway, the polls don't close until 9:00 o'clock, so we don't figure we are losing a thing either way.

All right, let us know.

(Jury repaired to the jury room.)

THE COURT: I have two notes. The first is, "We will work to 5:30, and then prefer to go back to the hotel."

THE CLERK: Marked Court Exhibit 3.

THE COURT: Then here is a dollar, but I am afraid it is No. 7 that says, "I request one pack of Marlboro."

THE CLERK: Marked Court Exhibit 4.

(So marked.)

(Recess.)

(5:30.)

THE COURT: We have a note from the jury. "What do we do with all the papers that are marked?" You put them into an envelope until tomorrow morning.

"Can we take a copy of the Indictment with us?"

No.

Agreed?

MR. WEINTRAUB: Very good, your Honor.

THE COURT: Agreed, Mr. Alch?

MR. ALCH: Yes, your Honor.

THE COURT: I think the best thing to do is just leave them in here.

(Whereupon, at 5:30 P.M. the jury entered the courtroom.)

THE COURT: We have your message, Members of the Jury, and the Exhibits. The Exhibits have been put in a folder here and will be returned to the Jury Room when you reassemble in the morning. As far as the Indictment, and things of that go, if you leave them on the table in there, they will be safe until you resume your deliberations in the morning. Do not take them with you.

I should say to you that ordinarily until, oh, the last twenty, twenty-five years, the custom of the country was pretty much, when you gave a case to a jury to decide, to keep the jury together until they reached a decision, and if they did not reach a decision, then late at night they would be bundled off under as uncomfortable conditions as possible to a nearby hotel, and, as you may have noticed, nearby hotels have somewhat deteriorated in Brooklyn in recent years, and then they would resume their

deliberations in the morning.

We concluded, that is, most of us have concluded that is no way to get a deliberate and considered verdict from the jury, and after we spent a great deal of time together trying a case carefully, thoughtfully, while you listened with patience, that to try to coerce or stampede a jury into arriving at a verdict is exactly the wrong way to end it.

So now we treat jury deliberations as something that is best done when the people are fresh of mind and ready for the task, and not something to be done in hours of exhaustion. So I think your decision to break up now and resume in the morning is very sensible.

However, there will be additional strictures put on you at this time. No outside communication at all. And I don't think you will be given any newspapers or anything else.

I think the Marshal has been busy scanning the television programs to see if there are enough Tuesday night movies to piece out until something interesting, like the election returns, starts.

Meanwhile, it is important, since you won't be all together, that you not discuss the case among you. I am not worried about leaks or anything of that sort, I am worried about something which is really a great deal

more serious. You spent a lot of time on the case. You definitely are the only people in the entire world who are qualified to decide this case, only you have heard what one counsel here calls the filtration of the best evidence, the Sworn evidence. The rest of us have heard a lot of stuff at side bar, and all the rest of it, stuff that is not in evidence, doesn't belong in evidence.

Counsel have taken sides in the case, but you alone are disinterested, Sworn to decide the case fairly and truly, and in possession of the data, and all of the data the diligence of counsel could present to you on the basis of which you could make your decision. Nobody can help you.

You have got to decide this case because no one else knows anything like what you know about the case, or has devoted undivided attention to it for these many days for the sole purpose of deciding it, and deciding it right.

If you talk about it in small groups with not all of you present, inevitably someone is going to say something that is important, some bit of recollection, some insight, and only two or three will hear it, and it may never be repeated, and never reach some other person on the jury to whose thinking it would be very important when joined with some of that other person's thinking,

you see, because after all, yours is a kind of a corporate act, and what it is going to end up is in unanimous, as it were, a unanimous corporate decision, and so it is most important that you all participate in all of the deliberations, and all get the benefit of the best of one another's ideea, including those that the person who has them doesn't happen to think are his best ideas, but which are very important, and useful to some others of you, when joined with your own ideas.

So it is important not to caucus, but to keep your deliberations, the common deliberations of the whole jury. So do not resume your deliberations until you are all together here in this Jury Room in the morn- and have the Exhibits again, and the Indictment, the aid memoir for the verdict before.

See you tomorrow. I think the Marshals plan to get you over here as early in the day as possible, and remember that now the administration of justice is in your hands overnight.

Good night. See you in the morning.

(Whereupon, at 5:40 P.M. the trial was continued to November 6, 1974.)

* * *

Form 1040 U.S. Individual Income Tax Return

U.S. Treasury Department, Internal Revenue Service

for the year January 1–December 31, 1968, or other taxable year beginning ..... 1968, ending ..... 19.....

1968

Please print or type

First name and initial (If joint return, use first names and middle initials of both)	Last name	Your social security number
RALPH + JOAN	JACOBSON	059 32 2820

Home address (Number and street or rural route): 169 FOREST DRIVE — Your occupation: EXEC.

City, town or post office, and State: JERICHO NEW YORK — ZIP code — Spouse's social security number:

Enter below name and address used on your return for 1967 (if same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1967 names and addresses. SAME — Spouse's occupation:

Your present employer and address

Your Filing Status—check only one:

1a ☐ Single

1b ☒ Married filing joint return (even if only one had income)

1c ☐ Married filing separately. If spouse is also filing a return, enter her (his) social security number in space provided above and give first name here _____

1d ☐ Unmarried Head of Household

1e ☐ Surviving widow(er) with dependent child

Your Exemptions

	Regular	65 or over	Blind	
2a Yourself	☐	☐	☐	Enter number of boxes checked ▶ 2
2b Spouse	☐	☐	☐	

3a First names of your dependent children who lived with you: JODI, JAY, GUY, DOUGLAS — Enter number ▶ 4

3b Number of other dependents (from page 2, Part I, line 3)

4 Total exemptions claimed ▶ 6

Please attach Copy B of Form W-2 here

Income If joint return include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation	5	10500
	6	Other income (from page 2, Part II, line 8)	6	11450
	7	Total (add lines 5 and 6)	7	21500
	8	Adjustments to income (from page 2, Part III, line 5)	8	
	9	Total income ("adjusted gross income") (subtract line 8 from line 7)	9	21500
Find tax from table —OR— Figure tax using tax rate schedules	10	If you do not itemize deductions and line 9 is under $5,000, find tax in tables on pages 12–14 of instructions. Omit lines 11a, b, c, or d. Enter tax on line 12a.	10	
	11a	If you itemize deductions, enter total from page 2, Part IV, line 17. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9; OR (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately).	11a	1000
	11b	Subtract line 11a from line 9. Enter balance on this line	11b	20500
	11c	Multiply total number of exemptions on line 4, above, by $600	11c	3600
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12a.	11d	7900
Your Tax, Credits, and Payments	12a	Tax (Check if from: Tax Table ☐, Tax Rate Schedule ☒, Sch. D ☐, or Sch. G ☐)	12a	1351
	12b	Tax surcharge. If line 12a is less than $734, find surcharge from tables on page 10 of instructions. If line 12a is $734 or more, multiply amount on line 12a by .075 and enter result. (If you claim retirement income credit, use Schedule B (Form 1040) to figure surcharge.)	12b	102
	12c	Total (add lines 12a and 12b)	12c	1463
	13	Total credits (from page 2, Part V, line 4)	13	
	14a	Income tax (subtract line 13 from line 12c)	14a	1463
	14b	Tax from recomputing prior year investment credit (attach statement)	14b	
	15	Self-employment tax (Schedule C-3 or F-1)	15	
	16	Total tax (add lines 14a, 14b, and 15)	16	1463
	17	Total Federal income tax withheld (attach Forms W-2)	17	77
	18	Excess F.I.C.A. tax withheld (two or more employers—see page 5 of instr.)	18	
	19	☐ Nonhighway Federal gasoline tax—Form 4136, ☐ Reg. Inv.—Form 2439	19	
	20	1968 Estimated tax payments (include 1967 overpayment allowed as a credit)	20	
	21	Total (add lines 17, 18, 19, and 20)	21	77
Balance Due or Refund	22	If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return	22	1386
	23	If payments (line 21) are larger than tax (line 16), enter Overpayment	23	
	24	Amount of line 23 you wish credited to 1969 Estimated Tax	24	
	25	Subtract line 24 from 23. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only	25	

Please attach Check or Money Order here

Make check or money order payable to Internal Revenue Service.

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here

Your signature 198 Date

Spouse's signature (If filing jointly, BOTH must sign even if only one had income)

Signature of preparer other than taxpayer — Date

Address

o68—16—80150-1

Exemptions Complete only for dependents claimed on line 3b, page 1

(a) NAME (If more space is needed attach schedule)	(b) Relationship	(c) Months lived in your home. If born or died during year write "B" or "D"	(d) Did dependent have income of $600 or more?	(e) Amount YOU furnished for dependent's support, if 100% write "ALL"	(f) Amount furnished by OTHERS including dependent
1				$	$
2					

3 Total number of dependents listed above. Enter here and on page 1, line 3b . . . . . ▶

Part III Income from sources other than wages, etc.

1a Gross dividends and other distributions on stock (list payers and amounts—write (H), (W), (J), for stock held by husband, wife, or jointly) .....

Total line 1a . . . . . ▶

1b Exclusion (see instructions).

1c Capital gain distributions (see page 5 of instructions).

1d Nontaxable distributions (see page 5 of instructions).

1e Total (add lines 1b, 1c, and 1d) . . . .

1f Taxable dividends (line 1a less line 1e—not less than zero) . . . . . ▶

Interest (list payers and amounts below)

Earnings from savings and loan assoc. and credit unions.

Other interest (on bank deposits, bonds, tax refunds, etc.).....

2 Total interest income . . . . . ▶

3 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (attach Sch. B) .

4 Business income or loss (attach Schedule C) . .

5 Sale or exchange of property (attach Schedule D) .

6 Farm income or loss (attach Schedule F) . . .

Miscellaneous income (state nature and source)

Commissions 8010

Misc Income 3440

7 Total miscellaneous income . . . . ▶ 11450

8 TOTAL (add lines 1f, 2, 3, 4, 5, 6, and 7). Enter here and on page 1, line 6 . . . ▶

Part IV Itemized deductions—Use only if you do not use tax table or standard deduction.

Medical and dental expense (not compensated by insurance or otherwise)—Attach itemized list.

1 One-half of insurance premiums for medical care (but not more than $150) . . .

2 Total cost of medicine and drugs . . .

3 Enter 1% of line 9, page 1 . . . . .

4 Subtract line 3 from line 2 (not less than zero)

5 Other medical, dental expenses (include balance of insurance premiums for medical care not deductible on line 1) . . .

6 Total (add lines 4 and 5) . . . . . .

7 Enter 3% of line 9, page 1 . . . . .

8 Subtract line 7 from line 6 (not less than zero) .

9 Total (add lines 1 and 8) . . . . . ▶

Contributions.—Cash—including checks, money orders, etc. (itemize) .....

10 Total cash contributions . . . . . .

11 Other than cash (see instructions for required statement). Enter total of such items here .

12 Carryover from prior years (see page 7 of instr.)

13 Total contributions (add lines 10, 11, and 12—see instructions for limitation) ▶

Taxes.—Real estate . . . . . .

State and local gasoline . . . . .

General sales (see page 15 of instructions) .

State and local income . . . . . .

Personal property . . . . . .

14 Total taxes . . . . . ▶

Interest expense.—Home Mortgage . . .

Installment purchases . . . . . .

Other (Itemize) .....

15 Total interest expense . . . . . ▶

Miscellaneous deductions.—(see page 8 of instructions) .....

16 Total miscellaneous . . . . . ▶

17 TOTAL DEDUCTIONS (add lines 9, 13, 14, 15, and 16). Enter here and on page 1, line 11a. ▶

Part V Adjustments to income

1 "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement) .

2 Moving expenses (attach Form 3903) . .

3 Employee business expense (attach Form 2106 or other statement) . . . . .

4 Payments by self-employed persons to retirement plans, etc. (attach Form 2950SE) .

5 TOTAL ADJUSTMENTS (lines 1 through 4). Enter here and on page 1, line 8 . . ▶ 199

Part VI Credits

1 Retirement income credit (Schedule B) .

2 Investment credit (Form 3468) . . .

3 Foreign tax credit (Form 1116) . . .

4 TOTAL CREDITS (for page 1, line 13) . ▶

EXPENSE ACCOUNTS—If you had an expense allowance or charged expenses to your employer, check here ☐ and see page 6 of instructions.

☆☆☆☆ U.S. GOVERNMENT PRINTING OFFICE : 1968—O-290-001 a50—10—50156-1

If husband and wife file a Joint Federal Return and elect to file Separate State Returns, use Form IT-203

(If joint return, enter data) RALPH + JOAN	Last name JACOBSON	Your social security number 059 | 26 | 2820	Occupation EXEC
(Number and street or rural route) 169 FOREST DRIVE	Apt. No.	Spouse's social security number	Occupation
(City, post office and state) JERICHO NEW YORK	ZIP code	County of residence	

If married and filing a joint Federal Return check here ☐

If spouse is filing a separate NY State Return check here and enter name of spouse ☐

If not a New York State resident for the entire year give period of NY residence:

From month ____ day ____ year ____ To: month ____ day ____ year ____

Total income (line 9 of Federal Form 1040)	12,500
If there are entries on lines 2 or 4, enter amount from line 1 on line 5	
Additions	
Add line 1 plus line 2	
Subtraction	
Total New York income (line 3 less line 4)	12500
Itemized Deductions or Standard Deduction (Standard Deduction—10% of line 5, but not more than $1000—enter	
on line 7a. If married and wife file separate returns, total of Standard Deduction for both may not exceed $1000)	
a Itemized deductions from Federal Return	
b Life insurance premiums and other deductions	
c Add line 6a plus line 6b	
d Income taxes included in line 6a and other subtractions	
e Line 6c less line 6d or Standard Deduction	1000
Line 5 less line 6e	11500
Exemptions from Federal Return	3600
New York taxable income (line 7 less line 8)	7900
Tax on amount on line 9 (from Tax Rate Schedule page 2)	304
Statutory credit—check box and enter amount claimed	
☐ $10.00 Single ☐ $25.00 Head of Household or Surviving spouse with dependent child	
☐ $12.50 Married—filing separate Returns ☐ $25.00 Married—filing Joint Return	25
Line 10 less line 11	6289
Unincorporated business tax (from Form IT-202)	
Line 12 plus line 13	6289

	Husband	Wife	Total	
NY State Tax withheld (attach Forms IT-2102)	11		11	
Payments on NY State Estimated Tax				
Add lines 15 and 16				11
If your tax (line 14) is larger than your payments (line 17), enter Balance Due				278
(Submit in full with this Return to New York State Income Tax Bureau)				
If your payments (line 17) are larger than your tax (line 14), enter Overpayment				
Amount of line 19 to be Credited to 1989 Estimated Tax on Form IT-2105				
Amount of line 19 to be Refunded				

For office use only

If this is a joint return, both husband and wife must sign — Date

Glen + Helb - 10 cc ct, n.y. 200

If prepared by person other than taxpayer — Address — Date

BEST COPY AVAILABLE

Calendar Year ...

Or Fiscal Year Ende...

The City of New York

Finance Administration
Department of Taxation and Finance

Nonresident Earnings Tax Return

IF BOTH HUSBAND AND WIFE ARE SUBJECT TO THE EARNINGS TAX, EACH MUST FILE A SEPARATE RETURN

RALPH + JOHN JACOBSON

Your first name and initial — Last name — Your social security no. 059 26 2820

69 FOREST DRIVE

Present address (Number and Street) — Occupation

JERICHO, NEW YORK

City and State — ZIP Code

FOR DEPT. USE ONLY

1	2	3	4	5	6	7

Enter the name and address used on your return for 19o7 (If the same as above, write "Same"). If none filed, give reason.

A. If self-employed, state business name and address.

B. Were you a New York City resident for any part of the taxable year? ☐ Yes. ☐ No.
If "Yes," give period of New York City residence: From: (month, day, year) _____ To: (month, day, year) _____

C. Did you or your spouse maintain an apartment or other living quarters in New York City during any part of the tax year?
☐ Yes. ☐ No. If "Yes," give address.

Calculation of Earnings Tax	A — Wages	B — Net Earnings from Self-employment
1 Wages (See Instructions. If allocation is made, enter from Line 7, Schedule A)	12500	
2 Net Earnings from self-employment (See Instructions. If allocation is made, enter from Line 7, Schedule B)		
3 Exclusion (From Schedule C on back) (See Instructions)	2000 —	
4 Line 1 minus Line 3, Column A	10,500	
5 Line 2 minus Line 3, Column B		
6 Tax on Wages — ¼ of 1% (.0025) of amount on Line 4, Column A		26 —
7 Tax on Net Earnings from Self-Employment — ⅜ of 1% (.00375) of amount on Line 5, Column B		
8 Total Earnings Tax (Line 6 plus Line 7)		26 —
9 New York City Unincorporated Business Income Tax from Form NYC-202 (Schedule B, Line 6) (Leave blank if you are not filing Form NYC-202)		
10 Sum of Lines 8 and 9		26
11 Payments and Credits: (a) New York City Tax withheld (Attach Forms NYC-2)	2 —	
(b) New York City Estimated Tax paid		
(c) Total Payments and Credits (Sum of Lines 11(a) and 11(b)) →		2 —
12 If Line 10 is greater than Line 11(c), enter BALANCE DUE		24 —
13 If Line 11(c) is greater than Line 10, enter OVERPAYMENT		
14 Amount of Line 13 to be: (a) Credited to 1969 Estimated Tax on Form NYC-5		
(b) Refunded		

Sign here ▶ 201

Date

MOTION TO DISMISS
INDICTMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

v.

No. 75 CR 349

RALPH JACOBSON,

Defendant.
----------X

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of James M. La Rossa, duly sworn to on the 12th day of September, 1975, the Exhibits annexed hereto, the accompanying Memorandum of Law, the Indictment, and all the other proceedings heretofore had herein, the undersigned will move this Court before the Hon. Morris E. Lasker, United States District Judge for the Southern District of New York, at the Courthouse located at Foley Square, Borough of Manhattan, City and State of New York, on the day of September, 1975, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for the following relief:

I. For an Order dismissing the instant Indictment on the ground that the defendant's Fifth Amendment right to have

a Grand Jury consider the charges against him has been denied.

II. For an Order dismissing the instant Indictment on the ground that prosecution is barred by the double jeopardy clause of the Fifth Amendment to the United States Constitution.

III. In the alternative, for an Order prohibiting the introduction of evidence by the Government concerning alleged transactions between the above named defendant and one Theresa Lissauer which have been previously litigated to a trial and jury and have been finally resolved.

IV. For such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
September 12th, 1975

Yours, etc.

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Defendant
Office and Post Office Address
522 Fifth Avenue
New York, New York 10036
687-4100

TO:

HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
United States Department of Justice
One St. Andrew's Plaza
New York, New York

By:_____
JAMES M. LA ROSSA
A Member of the Firm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

v.

No. 75 CR 349

RALPH JACOBSON,

AFFIDAVIT

Defendant.
----------X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JAMES M. LA ROSSA, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice in the United States District Court for the Southern District of New York with law offices at 522 Fifth Avenue, New York, New York 10036.

2. I am a Member of the Firm of La Rossa, Shargel & Fischetti, attorneys for the defendant herein and I am fully familiar with the facts and circumstances of this case.

3. This affidavit is made upon information and belief except as to those matters wherein it is stated that your deponent has actual knowledge thereof.

4. This affidavit is submitted in support of defendant's Motion for dismissal of the instant Indictment or, in the alternative, for an Order prohibiting the introduction

and barring the reconsideration of issues previously litigated and finally resolved by a jury.

5. The basis for the defendant's constitutional claim is two-fold. Firstly, the defendant has a Fifth Amendment right to have the Grand Jury, which considered the charges against him, be apprised of relevant and material information in possession of the prosecutor. Secondly, the issues to be litigated by the trial of this Indictment have been previously litigated and resolved and a subsequent trial would, therefore, offend the prohibition against being twice placed in jeopardy as embodied in the Fifth Amendment to the United States Constitution.

6. The defendant has moved in the alternative for an Order forbidding the prosecution from the introduction of evidence concerning particular issues previously determined. It is asserted that the doctrine of collateral estoppel, found to be applicable via the Fifth Amendment by the Supreme Court in United States v. Oppenheimer, 242 U.S. 85, 37 S.Ct. 68 (1916), forbids their re-litigation.

7. The factual basis of defendant's Motion is as follows: The foundation of the subject Indictment is predicated, inter alia, upon income allegedly received by the defendant

Jacobson from transactions between himself and one Theresa Lissauer. It is this income which the Government alleges defendant Jacobson wilfully omitted from his 1968 and 1969 income tax returns.

8. On June 6th, 1973, the defendant herein was indicted by a Grand Jury sitting in the Eastern District of New York in a four-count Indictment. (Attached hereto as Exhibit "A"). Counts one and two of that Indictment alleged that Ralph Jacobson, in concert with a Gertrude Tannenbaum, conspired to use extortionate means to attempt to collect and to collect extensions of credit from Mrs. Lissauer. In a trial before the Hon. John F. Dooling, Jr., United States District Judge for the Eastern District of New York, the defendant was, on November 7th, 1974, acquitted by the jury of all charges. (Judgment of Acquittal attached hereto as Exhibit "B").

9. The gravaman of the Government's case in the prosecution of Indictment No. 73 CR 522 was that Ralph Jacobson had, on at least two occasions, loaned large sums of money to Theresa Lissauer. Further, the defendant Jacobson, through violence and threats of violence, collected or attempted to collect these loans from her.

10. In defense of the above-mentioned Indictment,

counsel did not simply rely upon the infirmities of the Government's case. Rather, an affirmative defense was undertaken wherein the defense established that Mr. Jacobson had never, in fact, made any loans to Mrs. Lissauer. In the proof of his case, defendant Jacobson called a number of witnesses who Mrs. Lissauer had previously indicated would corroborate her story. Every witness failed to so corroborate any part of her account. Further, the defense demonstrated that a credible explanation for the defendant's single appearance at Mrs. Lissauer's place of business was available. (A more fully developed factual account is contained in the accompanying Memorandum of Law).

11. Indictment No. 75 CR 349 is presently on the trial calendar in the United States District Court for the Southern District of New York. Petitioner respectfully submits that the trial of this action is barred by the double jeopardy clause of the Fifth Amendment to the Constitution of the United States, judicial precedent and statute.

12. Movant submits, in the alternative, that an Order of prohibition should issue based upon the doctrine of collateral estoppel.

WHEREFORE, it is respectfully requested that the

Indictment herein be dismissed or that an Order of prohibition be issued restraining the offer of proof by the United States Government concerning those factual issues previously resolved in the case United States v. Jacobson, 73 CR 522.

/s/ James M. La Rossa
JAMES M. LA ROSSA

Sworn to before me this
12th day of September, 1975.
/s/ Lenore Berg

LENORE BERG
Commissioner of Deeds
City of New York No. 2-1352
Certificate Filed in New York County
Commission Expires Aug. 2, 1976

EXHIBIT "A" OF
MOTION TO DISMISS

UNITED STATES OF AMERICA
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, JUNE 6, 1973

v. INDICTMENT

GERTRUDE TANNENBAUM, a/k/a Trudy
and RALPH JACOBSON, a/k/a Beak, 73 CR 522

Defendants.

----------x

THE GRAND JURY CHARGES:

COUNT ONE

Beginning on or about January , 1968, and continuing up to and including the date of this indictment, in the Eastern District of New York the defendant Gertrude Tannenbaum, and the defendant Ralph Jacobson, and other persons to the Grand Jury unknown, knowingly conspired to use extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to attempt to collect and to collect extensions of credit from Theresa Lissauer.

(Title 18, United States Code, Section 894)

COUNT TWO

From on or about the 29th day of May, 1968, up to and including the date of this indictment, in the Eastern District of New York, the defendant Gertrude Tannenbaum, and the defendant

Ralph Jacobson knowingly did participate in the use of extortionate means within the meaning of Section 891(7) of Title 18, United States Code, to attempt to collect and to collect from Theresa Lissauer, a debtor, an extension of credit, to wit: the defendant Gertrude Tannenbaum, and the defendant Ralph Jacobson expressly and implicitly did threaten Theresa Lissauer with the use of violence and other criminal means which would cause harm to the person, reputation, and property of Theresa Lissauer.

(Title 18, United States Code, Sections 894 and 2)

COUNT THREE

On or about February 1969, in the Eastern District of New York, the defendant Ralph Jacobson knowingly did make extortionate extensions of credit to Irwin M. Nadborne in the amount of $3,500 the defendant Ralph Jacobson and Irwin M. Nadborne understanding, at the time said extensions of credit was (sic) made, that delay in making, and failure to make repayment of the same could result in the use of violence and other criminal means to cause harm to the person, reputation and property of Irwin M. Nadborne and others.

(Title 18, United States Code, Section 892)

COUNT FOUR

From February 1969 up to and including the date of this indictment in the Eastern District of New York the defendant Ralph Jacobson knowingly did participate in the use of extortionate means within the meaning of Section 891(7) of Title 18, to attempt to collect and to collect from Irwin M. Nadborne, a debtor, an extension of credit, to wit; the defendant Ralph Jacobson expressly and implicitly did threaten Irwin M. Nadborne with the use of violence and other criminal means which could cause harm to the person, reputation and property of Irwin M. Nadborne.

(Title 18, United States Code, Section 894).

A TRUE BILL

/s/ ELLIOT S. KOHN
FOREMAN

/s/ Robert A. Morse
Robert A. Morse (By MBP)
United States Attorney

EXHIBIT "B" OF
MOTION TO DISMISS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

THE UNITED STATES OF AMERICA,

NOV 7, 1974

vs.

JUDGMENT OF ACQUITTAL

RALPH JACOBSON a/k/a "Beak"

73 CR 522

----------X

The indictment herein having regularly come on for trial before the Honorable JOHN F. DOOLING, JR., United States District Judge, and a jury, and a verdict having been rendered finding the defendant RALPH JACOBSON not guilty,

IT IS ADJUDGED that the defendant is not guilty of the charge in said indictment.

DATED: Brooklyn, New York
November 7, 1974

/s/ JOHN F. DOOLING
UNITED STATES DISTRICT JUDGE

A TRUE COPY
ATTEST

DATED Sept. 4, 1975

LEWIS ORGEL
CLERK

By /s/ Frank Young
DEPUTY CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
- v -	:	75 Cr. 349 (M.E.L.)
RALPH JACOBSON,	:	
Defendant.	:	

STEVEN K. FRANKEL, being duly sworn, deposes and says:

1. I am a Special Attorney with the Department of Justice, and I submit this affidavit and annexed memorandum of law in opposition to the defendant's motion for dismissal of the instant indictment or for an order prohibiting the introduction of certain evidence at trial.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	
- v -	:	75 Cr. 349 (MEL)
RALPH JACOBSON,	:	
Defendant.	:	

GOVERNMENT'S MEMORANDUM OF LAW

POINT I

The Doctrine Of Collateral Estoppel Does Not Apply To The Instant Indictment.

The defendant, in his memorandum of law contends that he was previously acquitted in a prosecution alleging loan transactions between himself and one Theresa Lissauer. In truth, Jacobson was acquitted on charges of violations of Title 18, United States Code, Section 894, to wit: collections of extensions of credit by extortionate means. The defendant reasons that the jury determined by its judgment of acquittal that no such loan transactions had taken place.

To support his claim that the prosecution is herein barred by the doctrine of collateral estoppel the defendant in part relies on the Supreme Court's holding in Ashe v. Swenson,

397 U.S. 436, 90 S. Ct. 1189 (1970). (See defendant's memo of law pp. 11-13). A close reading of Ashe does not support defendant's claim here. In his prior trial for violations of Section 894, the jury was not required to find that frequent, extensive extensions of credit or loans had been made by the defendant. Instead, the jury was instructed that they must, in order to find the defendant guilty, determine that collections or attempts to collect extensions of credit were made, and most important, that extortionate means were used to collect those extensions of credit. Therefore, defendant's interpretation of the underlying rational for the verdict of acquittal is wholly unfounded. The verdict of acquittal was more likely a result of a lack of showing of the extortionate means allegedly used by Jacobson, since at that trial, the books and records of Lissauer corroborated the fact that loans had been made, although no corroboration of the threats was offered by the Government.

Just such a finding by a jury, namely the lack of threats, occurred earlier this year when Mr. Jacobson was on trial before Judge Frankel on a wholly unrelated series of charges of extortion and obstruction of justice. After nearly seven hours of deliberation Jacobson was acquitted, after which a number of jurors returned to the courtroom to discuss the case with his Honor, Mr. Alch (attorney for Jacobson), and myself. The jurors each indicated that

the jury felt that there was no doubt that Jacobson was a shylock, and that he had tried to direct the testimony of a witness before the grand jury, but they felt that the necessary extortionate means or threats had not been proven beyond a reasonable doubt, and based upon those findings voted for acquittal.

Regardless, any attempt to interpret the prior jury's reasons for acquitting the defendant is mere speculation. More importantly, collateral estoppel does not apply here since we are not speaking of the same "crime" nor the same charges. Under Title 26, United States Code, Section 7206, the Government herein charges the defendant with swearing to his 1968 and 1969 tax returns, knowing the same to be materially false. The income received as interest or vigorish on loans made, by Jacobson, along with certain undeclared earnings from stock transactions form the basis for the material understatment and the false swearing. Therefore, no showing of threats, fear or extortionate means are required. It is the false swearing that constitutes the crime or transaction here, and not loans or the collections of loans. Accordingly, the Government should not be barred from offering the testimony of the witness Lissauer regarding payments which constituted income to Ralph Jacobson.

POINT II

In his second point the defendant asserts the claim that the grand jury indictment was based upon a faulty or invalid presentation.

The defendant was not present during the grand jury proceedings, and is not privy to the testimony of the witnesses therein. Therefore, any claim of impropriety can only be deemed a "fishing expedition."

Again, defendant here claims that under indictment 73 Cr. 522, the jury that acquitted the defendant considered the loan issue and clearly disbelieved the Government's proof, and that the grand jury should have known these facts. No such conclusion can be drawn from the prior verdict, nor is defendant's claim herein supported by either evidence or logic. Hence, this argument too must fail.

CONCLUSION

THE GOVERNMENT RESPECTFULLY MOVES THAT DEFENDANT'S MOTION BE DENIED IN ALL RESPECTS.

Respectfully submitted,

PAUL J. CURRAN
United States Attorney

Steven K. Frankel
STEVEN K. FRANKEL
Special Attorney
U.S. Department of Justice

Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

UNITED STATES OF AMERICA,

-against-

75 Cr. 349

RALPH JACOBSON,

MEMORANDUM

Defendant.

----------X

APPEARANCES:

THOMAS J. CAHILL, ESQ.
United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Of Counsel: STEVEN K. FRANKEL, ESQ.
Special Attorney
U.S. Department of Justice

LA ROSSA, SHARGEL & FISCHETTI, ESQS.
522 Fifth Avenue
New York, New York 10036
Attorneys for Defendant

LASKER, D.J.

The defendant moves to dismiss his indictment on the ground that the Government is collaterally estopped by the defendant's acquittal in a prior trial from prosecuting the present case.

In 1973, the defendant was indicted in the Eastern District of New York for violations of 18 U.S.C. §894. The indictment alleged knowing participation in the use of extortionate means to attempt to collect and to collect extensions of credit from different individuals to whom loans had been made by the defendant. The trial of that indictment ended in the defendant's acquittal. In 1975, the defendant was indicted in this District for violating 26 U.S.C. §7206(1). The two count indictment charges the defendant with subscribing to his 1968 and 1969 tax returns, under penalty of perjury, knowing the tax returns to be materially false.

In his motion, the defendant contends that his acquittal in the 1973 trial establishes that the loan transactions underlying that indictment had never taken place. The defendant argues that, since the present indictment is predicated on the defendant's failure to report income derived from the same loan transactions, the Government may not relitigate the issue of whether the loans actually had been made. According to the defendant,

the Government's 1973 case against him rested on the testimony of the victim of the alleged credit extortion, a Mrs. Lissauer. The defense in that trial produced thirteen witnesses to rebut the testimony of Mrs. Lissauer, including her description of loan transactions with the defendant. The verdict of acquittal in the 1973 trial, the defendant argues, therefore represents a final judgment in the defendant's favor on the issue of the loan transactions.

The principles governing the defendant's claim recently were expressed in United States v. Cala, 521 F.2d 605, 607-08 (2d Cir. 1975:

> "In Ashe v. Swenson, 397 U.S. 436 (1970) the Supreme Court held that the Double Jeopardy Clause of the Fifth Amendment embodies the doctrine of collateral estoppel and applies it to criminal prosecutions, precluding prosecution of an offense when an issue of ultimate fact or an element essential to conviction has necessarily been determined in favor of the defendant by a valid and final judgment in prior proceedings between the same parties. ... The burden, however, is on the defendant in the second case to establish that the issue he seeks to foreclose from litigation in the present prosecution was necessarily decided in his favor by the prior verdict. ... In determining what issues were necessarily resolved by the prior proceedings, the court is to take a practical approach, examining the record, pleadings, evidence and jury instructions in order to decide 'whether a rational

> jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration.' ... If the jury could have done so in the prior case, the claim of collateral estoppel must fail, since the defendant can prevail only if the issue which he seeks to preclude from consideration was 'necessarily' resolved in his favor in the prior proceeding." (citations omitted)

Thus, to prevail on this motion, the defendant must establish that his prior acquittal necessarily represents a finding that no loan transactions had ever taken place.

The defendant has failed to meet that burden. In the 1973 trial, proof of two factual elements was essential to the Government's case against the defendant. The jury had to decide whether the loan transactions had taken place and, if they had, whether the defendant had used extortionate means to collect the extensions of credit on the loans. The verdict of acquittal may well have been grounded on the Government's failure to prove that the defendant had used extortionate means to collect from his debtors, even though loan transactions in fact had been proven. While the defendant's interpretation of the 1973 verdict is certainly plausible, nevertheless, it does not follow, as argued by the defendant, that the jury's verdict in the prior trial necessarily resolved in his favor the issue of the loan transaction which the present indictment raises. In this case, as in most

cases involving collateral estoppel claims, it "cannot be determined with any certainty upon what basis the previous jury reached its general verdict." United States v. Gugliaro, 501 F.2d 68, 70 (2d Cir. 1974). Compare United States v. Bruno, 333 F.Supp. 570 (E.D. Pa. 1971). Certainly, in the 1973 trial, a rational jury could have acquitted the defendant solely on the ground that the Government failed to prove the element of extortion, even though the existence of the loan transactions had been established.

The defendant also claims that the prosecution misled the grand jury that indicted him in 1975 by not revealing to that grand jury the legal significance of the 1973 acquittal. The argument is hollow. Our resolution of the collateral estoppel claim disposes of this contention as well.

For the reasons stated above, the motion to dismiss the indictment is denied.

It is so ordered.

Dated: New York, New York
December 17, 1975.

MORRIS E. LASKER

U.S.D.J.

forward to seeing you in the morning. We will start at 10:00 o'clock. I will go through my charge at that time, which I do not believe will take more than half an hour.

I know it will be difficult for you not to talk about the case tonight. You have heard all the evidence and you have heard the summations. It will be very natural to talk about it, to comment about the summations, and so on. I am instructing you only for the last night not to do so, and the reason is that you still have not heard what the instructions of law are. The law is not mystifying, but I, in fairness to Mr. Jacobson and to the government, do want you to understand carefully and precisely what the law is so you will be sure to be guided by the rules.

I hope there are some good shows on tonight. If not, I hope some of you can play cards or do something that will amuse you, or go to bed early and get a good night's sleep.

I will see you here at 10:00 o'clock tomorrow.

(Jury excused.)

(In the robing room.)

THE COURT: First of all, I want to complement both of you on your summations. They were both good and interesting.

This is my attitude towards the legal point that

was raised by your allusion to methods of reporting. I came into the picture because I thought you were creating the impression that that law says that you can report income on any old schedule you want to, and that would not be accurate. The law says if you have a capital gain you are required, for tax purposes, to report it on Schedule D. What I think you mean and what I would be willing to approve is that even though the law says that for tax purposes you are required to report on Schedule D, nevertheless the failure to do so would not constitute a false statement within the meaning of the statute here involved if the income is reported elsewhere on the return, unless you find that by reporting it somewhere else on the return the defendant intended to defraud the government.

MR. LA ROSSA: That's not accurate. As long as you report the income it does not make any difference what section is required. I am talking of criminal purposes.

THE COURT: We are both talking about that.

MR. LA ROSSA: We might be arguing about semantics.

THE COURT: I can conceive of a situation in which even though you merely change the schedule on which you report something you might intend to defraud the government by giving them false information because it will be a

hiding something which would otherwise appear.

MR. LA ROSSA: That does not apply here and it is confusing.

THE COURT: What is your proposal?

MR. LA ROSSA: The law requires that all material matters on an income tax return be truthful. That is to say that the taxpayer must believe all material statements to be true. The law does not require the taxpayer to identify his source of income. As long as the taxpayer has reported his incom there is no violation of this statute by the fact that a particular source of transaction was not identified.

THE COURT: I don't think that is quite accurate. I think the spirit is correct but I don't like to tell the jury, and I don't believe it to be the case, a blanket proposition that the law does not require the reporting of a source of income.

First of all, since Sullivan, and in the last 10 years or so, the statute or the regulations have been amended so that in some instances a taxpayer is required -- and I am underlining the word "required" -- for tax purposes to designate the source. For example, he must say what corporation paid him dividends. He must say what was the source of interest income. We are talking about Schedule D.

But, anyway, the law does require that various

kinds of income or the source of various kinds of income be reported. The proposition under which I think we are all agreed is that although that's true the statute with which we are here concerned is not violated by the failure to observe the requirements for reporting sources unless -- and this is what I believe to be true -- the jury believes that the failure to report or the reporting on some other schedule than that which the code requires we intended to be done, to defraud the government. If there is any statment made or not made on the return which was made for purpose of defrauding the government the statute is violated.

MR. LA ROSSA: Suppose --

THE COURT: Even if you want to give an example -- if you find that the defendant without intending to defraud the government reported the Davos capital gain as whatever it is --

MR. LA ROSSA: Other income.

THE COURT: -- other income, he could not be found guilty of doing so.

MR. SHARGEL: For violating the statute?

THE COURT: Yes. I say, therefore, you find that he was not intending to defraud the government and he reported it there, all right. I will require that phrase: Without intending to defraud the government.

MR. LA ROSSA: Another question: If there is other income that covers this transaction and the government has not disproved it, then I submit to the Court that under the Rule 29 motion that was made they have not proved beyond a reasonable doubt that the defendant submitted a false return and did not include that income.

THE COURT: That's a good thing for you to get on the record but on a late Friday night to simplify life I can't accept it. First, I don't think the government has that burden of proof; and, secondly the inference of reporting a capital gain as ordinary income is against a taxpayer. No sensible taxpayer would report a capital gain as ordinary income. They would have to pay a higher rate of tax.

Gentlemen, I will see you in the morning.

I questioned Juror No.5 and she said she would like to stay.

(Time noted: 5:40 p.m.)

(Adjourned to Saturday, May 15, 1976 at 10:00 a.m.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	Before: HON. MORRIS E. LASKER, D.J., and a Jury
VS.	
RALPH JACOBSON,	75 CRIM. 349 (MEL)
Defendant.	

New York, May 15, 1976
July 13, 1976

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

United States of America,

-vs- 75 Cr. 349 (MEL)

Ralph Jacobson

New York, New York
May 15, 1976--10:10 a.m.

(Trial resumed.)

(In the robing room.)

THE COURT: Since you mentioned it yourself in your summation yesterday, Mr. LaRossa, I take it you do wish the Court to charge on the right to remain silent?

MR. LA ROSSA: Yes, sir.

THE COURT: Very good.

(In open court - jury in box.)

THE COURT: Thank you for getting here so promptly. I believe you got here a little bit before I did. I came from a long distance.

I will start in a moment to deliver my charge to you. I want to explain that I will read my charge. I do that for two reasons: In the first place, I would prefer to talk directly to you as I have during the course of the trial and, I believe, that is the most effective way to address a jury, or any group of people; but the law has gotten complicated, and beyond that, of course, the issues that

you must decide are important for Mr. Jacobson and for the government, and today none of us wishes to take any chances on making a mistake about these matters; therefore, it is fairly normal practice for judges to reduce their charges to writing.

The second reason that I want to mention is that because I will be reading I may --and I have been told this -- read too fast. If I do and the significance of what I am saying is difficult for you to absorb, please raise your hand and let me know. I will correct it. I will do as much as possible, however, to avoid that problem.

Ladies and gentlemen, now that you have heard the testimony and the arguments of counsel the time has come to instruct you as to the law governing the case.

You have been chosen and sworn as jurors in this matter to try the issues presented by the allegations of the indictment and on your determination of the facts -- and I stress the words "your determination" -- to decide under the law, as I will instruct you, whether the government has proven either of the charges in the indictment against Ralph Jacobson beyond a reasonable doubt.

I will discuss those charges with you in detail in a few moments, but before that I wanted to give you some important preliminary and general instructions.

First, you are to perform your duties as jurors without bias or prejudice to or for anybody, either the government or Mr. Jacobson. The law does not permit jurors, and you would not want it to permit jurors, to be governed either by sympathy or swayed by prejudice or public opinion.

Secondly, we start with the propositin that we started with at the outset of the trial, that is, that the law presumes every defendant to be innocent against every charge that is made.

You will recall that when you were selected I specifically asked each one of you if you could enter into the discharge of your duties presuming Mr. Jacobson to be innocent unless and until proven guilty beyond a reasonable doubt after your own deliberations, and each of you gave me the answer yes.

This presumption of innocence is sufficient to acquit any defendant unless and until you, as jurors, are satisfied that the government has made such proof.

The burden or responsibility is on the government to prove any defendant guilty beyond a reasonable doubt of every essential element of any crime charged.

I will, of course, advise you later here what those elements are.

Third, I want to remind you of what I mentioned

at the outset of the trial, and that is that the existence of the indictment in this case does not constitute any evidence against Mr. Jacobson but is merely a method of bringing a charge against him.

The indictment in this case contains two counts, as you know. Each count contains a separate offense and each of the charges must be considered separately.

As I have said and the lawyers have said many times throughout the case, the government has assumed the burden of proving Mr. Jacobson guilty beyond a reasonable doubt. Let me define that important term for you at the outset.

A reasonable doubt is not a vague or speculative or imaginative doubt. It is a doubt which, as the phrase suggests, is based on reason and which comes either from the evidence or from the lack of evidence. It is a doubt which a reasonable man or a woman might entertain. It is a doubt -- and I think this the best definition of the phrase -- which would cause reasonable men and prudent women, like yourselves, to hesitate to act in connection with matters of importance in your own private lives.

Let's say you have an important decision to make. How do you go about making that decision? You think about everything you know about it and you think about everything you would want to know about it and have not been told, and

you say to yourselves: Do I have enough information? Do I have enough dependable information so that I am ready to act? If you say, "I do not have enough," then you have a reasonable doubt. If you say, "I do," then you may proceed.

A mere suspicion cannot justify conviction. Suspicion is no substitute for evidence, nor is it sufficient to convict you if you find that the circumstances merely render the guilt of a defendant probable.

The law does not deal in probabilities.

In saying that the government must prove its case beyond a reasonable doubt, if there is to be a conviction I do not mean that the law requires that the government must prove guilt beyond all possible doubt. Indeed, in human affairs there is nothing that we can prove beyond all possible doubt with the exception of mathematical proposition, but the proof must be of such a convincing character that you would be willing to rely and act on it in the most important decisions of your own affairs.

The evidence in this case, as I have told you a number of times, consists of the testimony of witnesses, the exhibits which have been received in evidence, and the facts which have been stipulated or agreed to by counsel.

You have to decide the case based solely on the evidence, but in your consideration of the evidence you are

not limited to the bald statements of the witnesses here. In deciding the many questions before you it is your job to determine the credibility or believability of the various witnesses who have testified. How do you go about that? Perhaps the best answer is to say that you determine the truthfulness or accuracy or weight to be given to a witness' testimony in the same way you determine such questions in your own personal affairs.

We are all constantly called upon, from day to day, to determine how much confidence we place in the statements that people make to us. The truthfulness or dependability of a witness, as that of any other person, can be determined by his demeanor or look, his relationship to the case and to the parties, the possibility of his being biased or partial, or of his or her not being biased or partial, the stake he or she may have in the outcome of the case, the reasonableness or unreasonableness of his or her statement, the strength or weakness of his or her recollection, and the extent to which what he or she has said has either been corroborated or contradicted by testimony of other witnesses or by exhibits or stipulations.

Of course, a witness' testimony may be impeached by his or her own prior inconsistent statements unless there is some explanation for the inconsistency.

In ordinary life, when you need to determine the truthfulness of a person, you ask yourselves, don't you, as you do here: Did he or she impress me? Did his or her version seem straightforward and candid? Did he or she seem to be trying to hide some of the facts? Did he or she have any motive to testify falsely or not such motive?

The ultimate question for you to determine and to decide in passing upon credibility of a witness is whether you believe that person told the truth. It is for the jurors alone to determine the weight to be given to the testimony of any witness, and in making these suggestions I have given you as guidelines I am not attempting to decide that question for you. That is your responsibility.

If you find that any witness has willfully testified falsely as to any material that is important matter, you may reject the entire testimony of that witness or you may accept such portion of it as you believe and reject the rest.

Ladies and gentlemen, there are two types of evidence of which we normally speak. I am sure you have heard them referred to often. One is called direct evidence. Direct evidence is that evidence of an eyewitness or an earwitness. "I have heard it," such a witness would say, or "I have seen it."

The other is indirect evidence, generally called circumstantial evidence. That is defined as the proof of a chain of events or circumstances which, itself, points to the existence or non-existence of facts as to which there was no eyewitness. The law makes no distinction as to the importance or weight of circumstantial evidence as distinct form direct evidence. It requires only that you find the facts in accordance with the evidence in the case, both direct and circumstantial, beyond a reasonable doubt.

An example, by the way, of the difference between circumstantial and direct evidence, which we often give to jurors but which is vivid, I think, is as follows:

If you looked out the window -- not today but some other day -- and noticed that it was raining or snowing, that would be direct evidence of the fact. On the other hand, if all the blinds in this room were drawn and somebody came through the door over there with a dripping umbrella, that would be pretty good circumstantial evidence that it was raining out. You would not have seen it with your own eyes, but you would have the right to infer, seeing a man coming through that door with a dripping umbrella, that it was raining outside. To be sure, he might have been standing in the shower in one of the rooms of this building that has a shower, but that would be a little unlikely. The other inference

would be the more normal one.

Members of the jury, both the United States Attorney, Mr. Frankel, and defense counsel, Mr. LaRossa, from time to time have, during the trial, objected to the introduction of evidence and addressed arguments to the Court. It is the duty of attorneys on both sides to make such objections when the attorney believes that the other side is proposing to put in evidence or ask questions about something that is not properly admissible. I want you to understand that when I have sustained an objection to a question or overruled an objection to a question that doesn't indicate any attitude of mine as to how this case should be decided. What it means, and the only thing it means, is that if I have sustained an objection or told you to disregard information, you are to disregard the question or the answer, as the case may be; and where I have ruled against a question, don't try to figure out what the witness might have answered if he had been allowed to do so.

Ladies and gentlemen, now that I have instructed you as to manner in which you should consider the evidence, and since you heard a very complete statement of the evidence itself yesterday from counsel in their summations, I will turn to the substance of the charges against Mr. Jacobson.

Mr. Jacobson is charged in both counts with

having violated a law passed by Congress generally known as Title 26, United States Code, Section 7206(1). That law reads as follows:

Any person who willfully makes and subscribes -- and the word "subscribes" means signs at the bottom -- any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalty of perjury, and which he as the signer does not believe to be true and correct as to every material matter, commits a crime.

Ladies and gentlemen, in order to convict Mr. Jacobson, or anybody, of violating that law, the government must establish beyond a reasonable doubt the following four elements:

First, that the return in question was signed by him.

Second, that the return in question contained or was verified by a written declaration that it was made under the penalty of perjury.

Third, that the maker didn't believe the return to be true and correct as to every material element.

And, fourth, that the maker acted knowingly and willfully at the time he made and signed the return.

The joint returns on Form 1040, that is the

normal form that most of us use to file our taxes, for the tax years ending 1968 and 1969 for Mr. Jacobson are in evidence as Government Exhibits 1 and 2. There is a stipulation between the parties which concedes the fact that Mr. Jacobson signed each of the returns in question; therefore, that element of the charge is already decided.

The second element is that each individual return for the years 1968 and 1969 must be one that contains or is verified by a written declaration that it was made under the penalty of perjury. There is no question that the tax returns here in evidence as Government Exhibits 1 and 2 contain or were verified by a written declaration that they were made under the penalties of perjury. You may make this determination simply by looking at the returns. Either it has such a statement or it does not. There is no doubt that it does.

We come now to the two elements that are really the questions, ladies and gentlemen, that you have to decide in this case, and as counsel said yesterday, these are the propositions that the case is all about.

The third element is that Mr.Jacobson, as the person who signed the return, must have believed that the return was not true and correct as to every material matter when he signed it. By "true and correct," I mean accurate

and complete. By "material matter in this case," I mean that the statements as to income were true and correct where the defendant listed on each return his taxable income for 1968 and 1969.

What the defendant, Mr. Jacobson, believed to be true or not true when he signed the return obviously depended on his state of mind. We have no way of looking into his or any person's mind other than by observing his conduct, the way he behalves and what he says. If you find that Mr. Jacobson signed these returns in good faith and reasonably believed that their contents were true and complete, he has not committed a crime and he must be acquitted as to that return.

81 For in such a case, even if the return was not actually true or correct, he would be simply laboring under a mistake and would not be considered as having willfully and knowingly filed a false return.

For example -- and this is an example that Mr. LaRossa raised yesterday, and I said something about it during his summation -- as to the reporting of capital gains on the sale of the Davos stock, the Internal Revenue Code requires that such a gain must be reported on the tax return, and the regulations or the law require that the proper place to report a capital gain is on Schedule D of your tax

return. However, even though the Internal Revenue Code says that a taxpayer must report a capital gain on Schedule D, nevertheless a taxpayer's failure to report it there would not constitute a false statement under the statute we are dealing with so long as you find that the income involved is reported elsewhere on the return, unless you find that when the defendant reported it elsewhere on his return he intended to defraud the government.

The government does not have to prove the exact amount of the misstatement, but it must prove beyond a reasonable doubt that the misstatement of the receipts was substantial. If it was 10 cents somebody would not be guilty. If the misstatement was insubstantial, or if there was none at all so that the net income is generally accurate, then the misstatement is not what we call material, as it must be to underly a conviction here.

If the mistatement of taxable income is large and substantial so that the net income varies greatly from the true net income, then it is a material matter.

The government here contends that its proof shows beyond a reasonable doubt that the maker of this return knew that the return intentionally understated the taxable income for the year 1968 and the year 1969, and that the maker, Mr. Jacobson, therefore did not believe the returns to be

true and correct as to every material matter.

The key question with respect to such returns is what Mr. Jacobson believed as to whether a particular return was true or false.

In determining whether Mr. Jacobson believed either return or both to be true and correct, or whether he believed them to be false and untrue, you should look at all of the circumstances that the transactions involve and you should also consider any other evidence or circumstances which you deem relevant to determine whether Mr. Jacobson believed each return to be true and correct or whether he knew full well and believed that it was false. It is for you to weigh the testimony and decide whether the government has proven beyond a reasonable doubt that Mr. Jacobson did not believe that his income tax returns for either 1968 ro 1969, as the case may be, was true or correct.

The last element that you must find, ladies and gentlemen, is that Mr. Jacobson acted in whatever you find he did willfully.

In the case charged here, or in any case, an act is willful if it is done voluntarily with a specific intent to sign a return as true and correct when the signer knows and believes that the return is not true and correct and when he does this for the purpose of concealing from the

government the true income or other material facts that an accurate and complete and truthful return would show. The law requires that nobody can be convicted unless you find that he did act willfully, and the reason for the law is so that no one will be convicted for innocent mistakes, stupidity carelessness, or other innocent reasons.

It is thus not sufficient for the government merely to prove that the return was prepared in haste or recklessly or that the underlying records were kept in a careless or unwise manner. If you find that that was the case you must acquit Mr. Jacobson.

Consider all the evidence and decide whether the government has proven beyond a reasonable doubt that Mr. Jacobson acted willfully.

To sum up, before you can convict Mr. Jacobson on either count, you must find beyond a reasonable doubt as to that count, first, that he signed the return in question and there is no doubt about that; second, that the return contained or was verified by a written declaration that it was made under the penalties of perjury -- and there is no doubt about that; third, that Mr. Jacobson believed the return was not true and correct as to every material matter. That is at the heart of the case and that is a question you must decide; fourth, that Mr. Jacobson acted willfully and

knowingly when he signed and made the return -- that also is at the heart of the case and must be decided by you.

Two further points on the law of these particular offenses for this trial:

You will recall that I permitted the government to put before you evidence as to Mr. Jacobson's returns for the years after 1968 and 1969. I told you at the time, and I say again, Mr. Jacobson is not on trial with regard to those years but only with regard to 1968 and 1969.

I want to advise you what the law is as to evidence of similar acts, and that is the subject that we are dealing with in connection with these other returns.

Evidence that an act was done at one time or on one occasion is not any evidence or proof that a similar act was done at another time or on another occasion. That is to say, evidence that Mr. Jacobson may have committed an earlier or later act of a like nature may not be considered in determining whether or not Mr. Jacobson committed the acts that he is accused of here, unless you should first find that the other evidence in the case, putting aside the later tax returns, establishes beyond a reasonable doubt that Mr.Jacobson did file or did do the particular act charged in the indictment. If the jury finds beyond a reasonable doubt from other evidence in the case that Mr. Jacobson did

the act charged in the indictment, then you may consider evidence as to these other returns in determining what his state of mind or intention was with regard to the tax returns for 1968 and 1969.

Since you have to decide what his state of mind was for 1968 and 1969, you are entitled to take into consideration what he did in other years with regard to his tax returns but only for the purpose of determining what his intention was.

Finally, I want to advise you, as you will note in the section of the law that we are dealing with, that is the section of the law regarding false statements in tax returns, that deals only with false statements and not with income tax evasion. Mr. Jacobson is not indicted or charged with intending to evade taxes. Rather, he is charged with making false statements in regard to his taxes, and the section under which he is charged is intended to assure that the government will be provided with accurate and complete information on returns and statements. Therefore, while the government must prove the elements of the crime I have described to you, it need not prove, since it is not part of the charge, either that Mr. Jacobson intended to evade tax or that the government relied on the false statements which they claimed that he made.

Ladies and gentlemen, in every criminal case there is a fundamental rule which every defendant has the right to rely on, and that is the rule that the defendant may not be compelled to take the witness stand or offer any testimony at all, although in this case, as you know, the defendant brought to your attention many witnesses. Pleading not guilty, a defendant has, in effect, denied every material issue against him stated in the indictment. It is the prosecution which must prove him guilty, and he cannot be required to disprove anything.

Any accused person has a right to stand moot. The fact that he does not take the stand, as the defendant in this case, may not be considered by any of you as any indication of guilt as to him or any admission on his part or any inference of guilt. This is not just an artificial rule. If you were accused of a crime you would feel that there is no reason for you to prove yourself innocent. However thoroughly you would be convinced of your innocence or knew of it, you would understand that it is the government's job to prove you guilty, if it can.

Ladies and gentlemen, I have come nearly to the end of my formal instruction. But, in a sense, the most important part of what I have to say is coming now and that is with regard to your role as jurors because it is for you,

and you alone, to decide whether the defendant, Mr. Jacobson, is guilty of either of the counts charged. I know that you will try the issues that have been presented to you in accordance with the serious oath that you took as jurors in which you promised that you would well and truly try the issues joined and, as sure as you are, do so based solely on the evidence which was put before you on this trial and the instructions of law which I have given you.

I like that phrase "well and truly try the issues joined." It goes back a thousand years, and its old-fashioned flavor should mean something to you and remind you of the hundreds of thousands of jurors who have performed this function before you, and that you must a true verdict render based on the evidence that you heard in court and the exhibits.

In order for you to reach a verdict either of not guilty or guilty as to Mr. Jacobson on either count, your verdict must, of course, be unanimous. That is, everybody must agree on that particular verdict.

In spite of the requirement of unanimity, each of you must, of course, decide each count as to the defendant individually in accordance with your own conscience, but only after deliberation with your fellow jurors to determine whether you believe a just verdict was being reached.

You should not hesitate to change your mind if you become convinced that your original view of the case was not in accordance with the facts or the law or whatever. On the other hand, you should not change your views for the purpose of reaching a verdict as a matter of convenience.

I really have no reason to believe that this jury will not be able to reach a verdict one way or the other as to the matters put before you.

To sum up, if you find that there is a reasonable doubt that the law has been violated by Mr. Jacobson on either count, you should not hesitate to acquit him on that count. On the other hand, if you find that the law has been violated and the government has proven, in fact, beyond a reasonable doubt as charged, you should not hesitate because of sympathy or for any other reason to render a verdict of guilty as to Mr. Jacobson on that count.

Nothing I have said in these instructions -- I stress this -- is intended to indicate any view of mine as to how the various issues put before you should be decided.

Ladies and gentlemen, according to custom, Juror No.1 normally acts as foreman of the jury in this court, and I am going to ask Mr. Sherman to do so in this case. That does not mean that Mr. Sherman will have any authority that the rest of you do not have, but it simply means that he

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will assist in seeing to it that your deliberations are orderly and all communications to the Court are properly made.

You will remember that you have the right at any time, ladies and gentlemen, to ask for the exhibits, or any one of them.

You have the right to have any testimony of any witness, or a part of testimony of any witness read to you.

You have the right to put any questions that you want to the Court.

Mr. Sherman, if you do wish to have any exhibits or any testimony read, or if you have any questions for the Court, all that you need do is to tell the marshal who will be standing outside the door and write down a message and give it to the marshal; he will being it to me and we will do whatever is necessary.

If you want any exhibits, or if you want any testimony read, please make your message as specific as possible so that we can send the exhibits to you as quickly as possible or so that we can locate the testimony as quickly as possible.

I am not encouraging or discouraging you in asking for anything. I want you to be sure you have the right to anything you want.

Ladies and gentlemen, I have now come to the end of my instructions. I will meet briefly with counsel in the robing room so that they can tell me whether they think anything needs clarifying, and then we will return.

(In the robing room.)

MR. LA ROSSA: I have but one problem, your Honor. If you remember, when the Karika, Papadopoulos, and Goldstein testimony came in, I advanced objections against it and your Honor asked me at that time whether I wanted a limiting instruction with respect to it, and I decided at that time I would wait until the charge. I have no problem with your charge on other similar acts except you said tax returns for other years were introduced and that they could only be used in the following manner. I submit that the same thing should apply.

THE COURT: I agree. I simply forgot about that testimony and I will say it applies to that.

MR. LA ROSSA: Give them a little as to what it is and they can't use it until they find the offense was committed.

MR. SHARGEL: Mr. Jacobson is charged only with not reporting interest received from Theresa Lissauer.

THE COURT: I don't follow you.

MR. LA ROSSA: In other words, if they find he

received interest from these people -- do you understand?

THE COURT: Certainly.

MR. FRANKEL: Is it your understanding that they cannot consider Mr. Jacobson's intent by similar acts until they have determined the issues? I don't believe that is so. I believe that they can determine his intent based upon subsequent and prior similar acts. They do not have to decide his intent and then go to see if his intent was similar in other years.

THE COURT: What I meant to say, I used defense counsel's proposed instruction. As I was reading it I was not quite satisfied with the language, but what I meant to say and believe to be the law is this: That they must first find that he signed a return that was not correct; then they can consider the other evidence in determining whether the lack of correctness was intentional or not.

MR. FRANKEL: On that I think your Honor may have been a little unclear.

MR. LA ROSSA: I don't think it was. What you said was they have to find out that the allegations are true.

THE COURT: What Mr. Frankel means is that they don't have to find out that he intentionally filed a false return before they can consider whether he intentionally

filed a false return.

MR. LA ROSSA: They must believe Lissauer before they can get to the question of intent.

THE COURT: Sure. They must believe her because they cannot find the return was false as to income, for example, unless they believe her.

MR. LA ROSSA: Papadopoulos, Karika, and Goldstein and others, your Honor.

THE COURT: I will make a note.

MR. FRANKEL: I would ask your Honor if you are charging the defense request which was almost pretty much from what I read verbatim, that you also add that you can determine his intent based upon conduct.

THE COURT: I will say what I just said here.

MR. FRANKEL: They can take into consideration his conduct regarding these other persons bearing on his intent in 1968 and 1969. That's the way intent reads in prior and subsequent acts.

(In open court.)

THE COURT: There are just two points of clarification:

Although I think you know it, income received from interest is, under the law, what we call ordinary income and must be reported on a tax return as ordinary

income.

The second is to clarify what I told you about reference to either past or later similar acts. I pointed out that Mr. Jacobson is accused of making false statements with regard to his 1968, 1969 returns, and I talked mostl about material that arose from later returns.

B83 There is also before you evidence with regard to matters which occurred before 1968 and 1969. The testimony of Mr. Papadopoulos, Mrs. Karika, and so on, the fact that they paid him interest, is not something for which he is charged here and that testimony, like the later tax returns, is relevant and can be considered by you only with regard to trying to determine what Mr. Jacobson's intentions were with regard to his 1968 and 1969 returns. As far as interest income is concerned, the only interest income he is accused of not having reported is the Theresa Lissauer interest income.

To sum up on this question: Before you can consider acts prior or later, you must determine that Mr. Jacobson did, in fact, file a return that was incorrect. If you find that he filed a return that was incorrect, then you can look at those other acts to determine what his intention was in filing an incorrect return.

Ladies and gentlemen, I have come to the end of

my instructions and it is with regret that I now must excuse the alternate jurors. In spite of the fact that they have been sequestered, I think I detect a certain degree of disappointment in not being able to participate in the deliberations. If I had my choice, I might let you do so, ladies and gentlemen, but the law doesn't permit me any discretion whatsoever.

Therefore, it is with great thanks that I excuse the four alternate jurors. You have been part of a very generous group in allowing us to keep you this long under inconvenient circumstances. I hope you found it interesting and worthwhile to serve on this jury. I may say that you have seen some very good lawyers at work, and for once perhaps a courtroom that seemed a little bit like what you see on television. That doesn't happen very often.

If you care to stay, you are free to do so. Obviously, you cannot communicate in any way, even by looking at the jurors, to communicate should they come back into the courtroom to ask questions. But if you wish to stay, you may. I mention that because I have been told that somebody did ask whether it was permissible. It is permissible. I will have to ask you, however, now, to go and get your belongings if you have any in the jury room so that you will not have to go back into the jury room when the regular jurors go in there

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FOLEY SQUARE, NEW YORK, N.Y. CO 3-8580

to deliberate.

I also have some moderately unhappy news. I understand that you are still on jury duty, as you would have been even if you had not been sequestered. You will, therefore, have to report at 9:00 o'clock down in Room 109.

Will you four alternate jurors please go into the jury room and get anything you have in there.

(Marshals sworn.)

THE COURT: Ladies and gentlemen, as soon as the alternates return I will ask the marshals to take you into the jury room. We will arrange to have lunch brought in today. It will be up to you as to whether you want to deliberate while you are eating. It will save time. I am sure you would like to save time.

Ladies and gentlemen, you will have to make a separate determination as to each count. Therefore, I would suggest, Mr. Sherman, you consider Count 1 first, and when you have decided that then you go on to Count 2, unless you have any problem with Count 1. You can always go to whichever one you want.

Ladies and gentlemen, you may commence your deliberations.

(Time noted: 11:00 o'clock a.m.)

THE COURT: Gentlemen, if any exhibit is requested,

send it in. If there is any request for testimony, find it; if there is nothing controversial it may be read.

If you need me for any ruling I will be upstairs.

(At 11:10 the following note was sent by the jury: Please send copies of the two exhibits to be considered)

(Court's Exhibit 1 marked for Identification.)

(Court's Exhibit 2 marked for Identification.)

(Court's Exhibit 3 marked for Identification.)

(In the robing room.)

THE COURT: I have not seen the note, but the last item on the note asks to see "the transcript." I think I have to tell them that there is no such thing. There is a transcript of part of the proceedings but it is only part of the proceedings. If they wish to have specific testimony read they should tell us.

MR. LA ROSSA: I have no problem with that if you want to send them a note to that effect.

MR. FRANKEL: And everything else they asked for --

MR. LA ROSSA: Do you read that to include the amended returns as well?

THE COURT: I have not seen the note.

(Pause)

The word "all" being underlined, I would assume

it applies to the later returns as well as the early ones. Since I am going to bring them in to talk about the last item, I will ask them about this.

Copies of all day sheets. Those are the papers that Mrs. Lissauer testified about.

Bring in the jury.

(In open court.)

MR. LA ROSSA: The defendant is not here, your Honor. We waive his appearance.

(Jury in box.)

THE COURT: I have your note, Mr. Sherman, which we have marked as Court Exhibit 3. We have some other Court exhibits that precede it which says first: All underlined income taxes submitted in evidence for the trial.

I would like to know whether you mean just the 1968 and 1969 returns or the later returns as well.

THE FOREMAN: The later returns as well.

THE COURT: Second, it says: Copy of all day sheets.

Those are the exhibits, I take it, that Mrs. Lissauer submitted?

THE FOREMAN: Right.

THE COURT: Third, you say: Copy of transcript. There is no complete transcript of the trial of

the case, and even with regard to such material as has been transcribed -- some of it has been -- if you wish to review any of it, the procedure that we will have to follow is for you to come in and let the reporter read it to you so that we can be sure that everybody hears is exactly the same as everybody else hears or looks at.

Is there any testimony that you are interested in hearing at this time or did you simply want to have the transcript on hand?

THE FOREMAN: Actually there were segments of testimony from not all of the witnesses necessarily, but segments of some of the witnesses, Mrs. Lissauer and a couple of others.

THE COURT: I recognize there are some problems, particularly with somebody like Mrs. Lissauer who testified, it was lengthy testimony, and you would have to specify what you are anxious to hear. I am afraid I will have to ask you to do that.

As far as other witnesses, most of them were not terribly long. As far as hearing portions of the transcript, you will have to specify on another slip what it is that you would like to know.

Thank you very much.

We will send in all of the tax returns.

THE FOREMAN: The amended returns.

THE COURT: As well?

THE FOREMAN: Yes.

THE COURT: All right. Thank you very much. You can return.

By the way, in about 15 or 20 minutes I will be going to get some lunch, and counsel too. If you send us a message for a transcript and you don't get a reply for a while it is because we are at lunch.

Gentlemen, I would suggest you do go out in 15 or 20 minutes and take about an hour for lunch.

I would like to take as little time as possible so we can bring this thing to a conclusion.

(Jury excused.)

MR. SHARGEL: In the event they deliberate for any length, are you going to adjourn at 6:00 o'clock?

THE COURT: I will have to play it by ear. I would like to, but what I will probably do is ask them if they are going to reach a verdict, and, if so, I will stay; if not, I won't stay.

(Pause)

MR. FRANKEL: The government, your Honor, has compiled all of the returns and the daily sheets in evidence and has showed them to Mr. LaRossa who has examined them.

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Now we would like to send them into the jury room as requested.

MR. LA ROSSA: It is perfectly all right to do that.

(Luncheon recess.)

(Time noted: 3:20 p.m.)

(In the robing room.)

THE COURT: I have received a note that is to be marked as Court Exhibit 4.

(Court's Exhibit 4 marked for Identification.)

THE COURT: This note reads: We would like to clarify the meaning of miscellaneous income reported on the 1968 return. Could said income possibly include various interest income?

I have my own views on this, but before I make any definitive comment, I would like to ask the jury to return to us the 1968 return so I can look at it and see if my attitude is influenced in any way by what appears on the return.

Is that satisfactory to you for the first step?

MR. FRANKEL: Yes.

MR. LA ROSSA: We can show you a copy of it.

MR. FRANKEL: It is in my office.

THE COURT: Ask the jury to return the 1968 return.

In the meantime, let's discuss, off the record,

something informally.

(Discussion off the record.)

(In open court; jury in box.)

THE COURT: Good afternoon, ladies and gentlemen. Please be seated.

I have your note which was marked as Court Exhibit 4. It reads: We would like to clarify the meaning of miscellaneous income reported on the 1968 return. Could said income possibly include various interest income?

Mr. Sherman, that is a perfectly good question, but at least in my mind it could have two possible meanings, or you might be asking one of two questions. The two questions are: Do you mean that the proper way to report income might possibly be to put it under miscellaneous income? Or, the second question might mean: May Mr. Jacobson possibly have done it on his own?

Can you tell me which of those two questions you mean?

THE FOREMAN: The first question is what we were more or less trying to decide.

THE COURT: Let me try to answer both questions.

The first question is a question of law. What is the law about reporting interest income? Civil law, not criminal law, requires that interest income is supposed to be

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

reported under interest income. You may have noticed on the return, if you examined it, in the middle of the left-hand side of the second page there is a place for interest income. However, as I told you this morning, nobody can be convicted merely for putting an item of income in the wrong box, unless you find that by putting it in the wrong box that person intended to defraud the government.

The second question is a question of fact, and that is: May Mr. Jacobson actually have put that interest income in the miscellaneous item?

That's something I cannot answer. If that's a question in your mind, that is a question which you must answer from the evidence that is in the record.

Are there any other questions on this point?

Thank you, ladies and gentlemen.

There is one thing I want to tell you before you return. I might as well ask you now whether you have reached a verdict on either of the counts yet?

THE FOREMAN: Yes.

THE COURT: If you have I will receive your verdict on that count. Which count have you decided?

THE FOREMAN: On No.2.

THE COURT: Do you all agree that a verdict has been reached on Count No.2?

(The jury nodded affirmatively.)

THE COURT: Would you please call the name of the jurors and receive the verdict on Count No.2.

(Roll taken.)

THE CLERK: How do you find the defendant on Count 2?

THE FOREMAN: Not guilty.

THE COURT: You don't need to poll the jury unless somebody asks.

THE CLERK: Members of the jury, please listen to your verdict as it now stands recorded. You say you find the defendant not guilty on Count 2, and so say you all?

(The jury nodded affirmatively.)

THE COURT: I take it there is no reason to poll the jury on that?

MR. FRANKEL: No, your Honor.

THE COURT: Thank you.

Will you return and go ahead on Count 1.

(Time noted: 3:35 p.m.; the jury returned to the jury room to continue its deliberations.)

THE COURT: Count 2 is the capital gain count, is it not?

MR. FRANKEL: Yes.

THE COURT: We will await further communication

from the jury.

(At 5:20 p.m. the following proceedings took place:)

(Jury in box.)

(Roll taken.)

THE CLERK: Mr. Foreman, has the jury reached a Count 1 as to the defendant Ralph Jacobson?

THE FOREMAN: We have.

THE CLERK: How do you find the defendant on Count 1?

THE FOREMAN: Guilty.

THE CLERK: Members of the jury, please listen to your verdict as it now stands recorded. You say you find the defendant, Ralph Jacobson, guilty on Count 1 and not guilty on Count 2, and so say you all?

MR. LA ROSSA: I would like the jury polled, your Honor.

(The jury was polled and each juror answered affirmatively to the aforementioned question by the clerk.)

THE COURT: Ladies and gentlemen, I have great thanks to give you. As the person who administered this trial in the first place, I want to express my respect for the decision that you had to make. It is, indeed, difficult to pass judgment on one's fellow citizen, but it is the obliga-

tion of citizenship to pass judgment if you are persuaded, as apparently you were, that the government had proved its case beyond a reasonable doubt on Count 1.

Beyond that, I want to give you special thanks for the personal inconvenience you subjected yourself to in sitting on this jury. I believe there were some positive aspects to it. It seems to me I have noticed a growing friendship among members of the jury, and I know such experiences often do cause friendships. I am glad if that is the case. I hope you leave here believing that the American system of justice, although it has its imperfections, has a fair and decent way of reaching the truth and doing justice, as much as mankind is capable of performing it.

If there are any of you who wish to be given dinner I will so direct it.

I take it that the necessary arrangements have been made for you to return to the motel. You are free either to stay for dinner or to go home. I am sure your families will be glad to see you.

I am sorry to say you will have to be here Monday morning for further jury duty, but if, by any chance -- and I think it is highly unlikely -- you should be called upon to serve as a sequestered juror, let the judge know and ask him to let me know and I will see that you don't.

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Thank you, ladies and gentlemen.

(Jury excused.)

MR. LA ROSSA: May it please the Court, at this time I ask that bail be continued until the time of sentence.

MR. FRANKEL: I have no objection to that.

MR. LA ROSSA: I ask that the motion for judgment of acquittal be extended to the time of sentence in the event defendant wishes to file a written motion.

THE COURT: That request is granted. My practice in these matters is that if there is a motion -- how should I put it -- of substance to be made, particularly one in written form, that it be filed, let us say, 10 days before the date of sentence so that the government can answer no less than three days before sentence.

I am setting sentence for Friday, July 2nd, 10:00 o'clock. We will be in Room 619 at that time.

Are there any other matters to come before the Court?

MR. LA ROSSA: No.

MR. FRANKEL: Thank you, your Honor.

(Time noted: 5:30 p.m.)

* * * *

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JUDGMENT AND PROBATION/COMMITMENT ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
UNITED STATES OF AMERICA,

v.

Docket No. 75 Cr. 349 MEL

RALPH JACOBSON,

Defendant.
----------X

In the presence of the attorney for the government the defendant appeared in person on this date ------- 7-23-76

COUNSEL -- WITH COUNSEL GERALD SHARGEL

PLEA -- NOT GUILTY

FINDING & JUDGMENT There being a verdict of GUILTY (Count 1).

Defendant has been convicted as charged of the offenses of signing false documents - Title 26, U.S.C. Section 7206(1).

The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his duly authorized representative for imprisonment for a period of:

SENTENCE OR PROBATION ORDER	THREE (3) YEARS on Count 1 (Right to Appeal)
ADDITIONAL CONDITIONS OF PROBATION	In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

SIGNED BY
United States District Judge

/s/ Morris E. Lasker
MORRIS E. LASKER, U.S.D.J.

Date 7/23/76

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA,

v.

RALPH JACOBSON,

Defendant.

----------X

Docket No. 75 CR 349

LASKER, J.
(District Court Judge)

Notice is hereby given that Ralph Jacobson appeals to the United States Court of Appeals for the Second Circuit from the Judgment entered in this action on July 23, 1973.

GERALD L. SHARGEL
(Counsel for Appellant)

522 Fifth Avenue
New York, New York 10036

687-4100

Date: July 23, 1976

To: Robert Fiske
United States Attorney
Southern District of New York

Service of three (3) copies of the within
is admitted this 14th day of September 1976

United States Attorney for
the Southern District

ROBERT B. FISKE JR.

3 Ops Received

COPY RECEIVED
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U. S. ATTORNEY
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